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**MANUAL OF THE LAW OF
JOINT STOCK COMPANIES
IN SCOTLAND**



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MANUAL OF
THE LAW OF
JOINT STOCK COMPANIES
IN SCOTLAND

WITH AN APPENDIX
CONTAINING "THE COMPANIES ACTS," INCLUDING
"THE COMPANIES ACT, 1900"

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PREFACE

THE aim of this volume is to supply an acknowledged deficiency, and to provide—in a form simple, concise, inexpensive, and divested as far as possible of technicalities of expression—a statement of the law for the use of members of the legal profession, and of officials, shareholders, and creditors interested in Joint Stock Companies registered in Scotland.

There have been several handbooks published in England dealing with Company Law, but, so far, no similar book has recently been published in Scotland ; and it is material to note that the laws of England and Scotland differ in many respects on the subject.

The Acts of Parliament regulating Joint Stock Companies, so far as these are applicable to Scotland, are printed in the Appendix ; and a reference to the more important cases, deciding or bearing on the points dealt with, has been generally given.

A. M'N.

EDINBURGH, *1st March* 1901.

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THE LAW OF JOINT STOCK COMPANIES



CHAPTER I

INTRODUCTION

IN estimating the influence of recent legislation on the subject of Joint Stock Companies, and in order to acquire a knowledge of the law relating to such Companies, it is necessary to understand, in general terms at least, the principles of the law of partnership of which the first is to a great extent a mere statutory development. The fundamental doctrine of the law of partnership in the case of ordinary mercantile Companies is that "every partner is an agent of the firm and his other partners for the purposes of the business of the partnership ; and the acts of every partner who does any act for carrying on in the usual way business of the kind carried on by the firm of which he is a member, bind the firm and his partners, unless the partner so acting has, in fact, no authority to act for the firm in the particular matter, and the person with whom he is dealing either knows that he has no authority or does not know or believe him to be a partner."¹ From this it follows that whatever is the agreement between the partners as to their respective duties, or as to the division of profit or loss, all the

¹ Partnership Act, 1890, sec. 5.

partners are, in a question with the public, liable in their last farthing for the debts of the partnership, and for the due fulfilment of the obligations undertaken by the partners of the firm for the carrying on of the business. But in the case of corporations created by Statute, whether by special Acts of Parliament, as in the case of railway, gas, and water Companies, or by Memoranda of Association, deriving their force from the Joint Stock Companies Acts, the position of matters is different. Such Companies have not the same powers, privileges, and general incidents as are the attributes of common law partnerships, but such powers, privileges, and incidents only as are conferred upon them by their special Acts or Memoranda of Association. Nor can such Companies be regarded in the light of private partnerships: their shareholders are not exposed to the liabilities and risks to which the members of private partnerships are subject, and their creditors have not the same remedies for obtaining payment of what may be owing to them as have the creditors of private partnerships. Creditors cannot, as in the case of ordinary partnerships, take decree or do diligence against the individual shareholders. Further, the very nature of an incorporation renders it indispensable that there should be a directorial body to carry on the business of the Company; and the constitution of a body of directors, of course, takes away at once the power of any individual member of the Company to bind the Company. But it does more than that, for it creates a presumption of a different kind—a presumption that the whole of the business of the Company is to be done by the directors, and by no one else, and in no other way. Hence the public are entitled to expect that everything that the directors do shall be valid and binding upon the Company. No doubt, in the case of statutory Companies in particular, this presumption must yield to fact, and it may be a fundamental condition of the Company's contract of settlement and a part of its constitution that the directors shall have certain powers, and shall not have certain powers either by themselves or with the consent of a general meeting of the

shareholders of the Company. A third party dealing with a Company is bound to make himself acquainted with the conditions of the contract of that Company in so far as they are made public. Under the Joint Stock Companies Acts a third party dealing with such a Company is bound to make himself master, not only of the Statute under which the Company is incorporated, but of its Articles of Association, which are registered for the very purpose of being made public.

No good purpose would be served by an attempt to trace when Joint Stock Companies were first instituted, as, like many other inventions in daily use, their origin is involved in obscurity. It is, however, clear from the provisions of an Act passed in 1719,¹ commonly called the "Bubble Act," that they must have been in existence prior to that date; for by the Act just mentioned they were deemed to be "public nuisances," and "all offenders therein, being thereof lawfully convicted in any of His Majesty's Courts of Record at Westminster or in Edinburgh or in Dublin, shall be liable to such fines, penalties, and punishment whereunto persons convicted for common and public nuisances are by any of the laws and Statutes of this realm subject and liable." There is no evidence that this Act was ever enforced in Scotland, but it stood unrepealed until 1825. It was then found that during the preceding century, and notwithstanding the provisions of the Act, many Joint Stock Companies had been formed and were then carrying on business in Scotland. The Legislature in that year, so far from challenging the legality of such Companies, did by another Act² recognise the unincorporated Joint Stock Companies of Scotland, and enabled them to sue and be sued in the Company name in this preamble: "Whereas the practice has prevailed in Scotland of instituting societies possessing joint stock, the shares of which are either conditionally or unconditionally transferable for the purpose of carrying on banking and other commercial concerns, many of which have transacted business for a number of years to the great advantage of that

¹ 6 Geo. I. c. 18.

² 6 Geo. IV. c. 131.

country." This Act, which was limited in duration to twelve months, was made perpetual as regards banking Companies by the Act 7 Geo. iv. c. 67.

From this time up to 1862 many Acts of Parliament were passed with regard to Companies, but to the provisions of these Acts it is unnecessary here to refer.

In consequence of the increasing number and importance of Joint Stock Companies, and the difficulty of determining from among the numerous Acts of Parliament which had been passed with reference to them what was the then existing law on the subject, the Companies Act of 1862 was passed. That Act was intended to form a complete code of Company law for the United Kingdom, embracing in its scope the then existing law, with such amendments as observation and experience had shown to be desirable. Time has demonstrated the fact that the Act was by no means perfect, for since its becoming law it has in part been repealed, while amending Acts have from time to time been passed.

It must not be assumed, for the contrary is the case, that all Companies are regulated by the Joint Stock Companies Acts. Besides private partnerships there are (1) Chartered Companies, which are created by Royal Charter granted by the Crown in the exercise of its prerogative or by special Act of Parliament. The Royal Bank of Scotland and the British Linen Company are examples of corporations created by Royal Charter, while the Bank of Scotland is an example of a corporation created by special Act of Parliament; and (2) Companies formed under the Companies Clauses Acts. A consideration of the law relating to such Companies is outwith the scope of the present work, which is limited to those Companies incorporated under the Companies Act of 1862, and Acts explaining and amending the same.

CHAPTER II

FORMATION OF COMPANIES

ACTS OF PARLIAMENT REGULATING JOINT STOCK COMPANIES.—

The following are the Acts of Parliament which at present regulate Joint Stock Companies, and these, so far as applicable to Scotland, will be found in the Appendix, viz. :—

The Companies Act, 1862, 25 & 26 Vict. c. 89.

The Companies Seals Act, 1864, 27 & 28 Vict. c. 19.

The Companies Act, 1867, 30 & 31 Vict. c. 131.

The Joint Stock Companies Arrangement Act, 1870, 33 & 34 Vict. c. 104.

The Companies Act, 1877, 40 & 41 Vict. c. 26.

The Companies Act, 1879, 42 & 43 Vict. c. 76.

The Companies Act, 1880, 43 Vict. c. 19.

The Companies (Colonial Registers) Act, 1883, 46 & 47 Vict. c. 30.

The Companies Act, 1886, 49 & 50 Vict. c. 23.

The Companies (Memorandum of Association) Act, 1890, 53 and 54 Vict. c. 62.

The Companies (Winding Up) Act, 1890, 53 & 54 Vict. c. 63.¹

The Directors Liability Act, 1890, 53 & 54 Vict. c. 64.

The Forged Transfers Act, 1891, 54 & 55 Vict. c. 43.

The Forged Transfers Act, 1892, 55 & 56 Vict. c. 36.

The Companies (Winding Up) Act, 1893, 56 & 57 Vict. c. 58.¹

The Companies Act, 1898, 61 & 62 Vict. c. 26.

The Companies Act, 1900, 63 & 64 Vict. c. 48.

¹ This Act does not apply to Scotland.

The principal Act regulating Joint Stock Companies is that of 1862, and to its provisions attention will now be directed.

COMMENCEMENT OF ACT AND PROHIBITION OF PARTNERSHIPS EXCEEDING CERTAIN NUMBER.—The Act came into operation on the 2nd November 1862, and since then no Company, association, or partnership consisting of more than ten persons can be formed for the purpose of carrying on the business of banking, unless it is registered as a Company under the Act, or is formed in pursuance of some other Act of Parliament, or of letters patent; and no Company, association, or partnership consisting of more than twenty persons can be formed for the purpose of carrying on any other business that has for its object the acquisition of gain by the Company, association, or partnership, or by the individual members thereof, unless it is registered as a Company under the Act, or is formed in pursuance of some other Act of Parliament, or of letters patent, or is a Company engaged in working mines within and subject to the jurisdiction of the Stannaries.¹ The Stannary Courts are Courts in Devonshire and Cornwall for the administration of justice among the workers employed in the tin mines which are there in operation. A consideration of the powers of these Courts is outwith the purview of the present work. Generally stated, the Act applies to all commercial undertakings that have for their object the acquisition of gain. The word “gain” as here used means “acquisition.” It is not limited to pecuniary gain. Still less is it limited to commercial profit. The word “gain” is to be taken as referring to a Company which is formed to acquire something, or in which the individual members are to acquire something as distinguished from a Company formed for spending something, and in which the individual members are simply to give something away, or to spend something, and not to gain anything.²

Effect of forming a Company in Violation of Act.—If in

¹ Act, sec. 4.

² Per Sir G. Jessel, M. R., *ex parte Grove & Co.*, 1875, 10 Ch. at p. 546.

contravention of the provisions of the Act, persons elect to engage in an unlawful association, the Court will not interfere to settle any question that may arise among the members. If men deal with such a Company, and which *primâ facie* must be taken to be illegal, because it is not registered, they have thereby thrown upon them the burden of ascertaining whether it is a legal Company or not; and if they choose to trade with it they must take the consequences and recover their debts or enforce the obligations of the Association as best they can.¹

Division of Companies under the Acts.—Companies incorporated under the Companies Acts are divided into three classes, viz. :—(1) Companies limited by shares; (2) Companies limited by guarantee; and (3) Companies with unlimited liability.

HOW TO FORM A COMPANY

MODE OF FORMING COMPANY.²—Any seven or more persons associated for any lawful purpose may, by subscribing their names to a Memorandum of Association, and otherwise complying with the requisitions of the Act in respect of registration, form an incorporated Company, with or without limited liability.

The Statute enacts nothing as to the extent or degree of interest which may be held by each of the seven persons, or as to the proportion of interest or influence possessed by one or the majority of the shareholders over the others. One share is enough, and it is immaterial whether the seven persons subscribing the Memorandum are relations or strangers, or are beneficially entitled to the share or shares for which they subscribe. In the formation of many Companies, the statutory number is eked out by clerks or friends, who sign their names at the request of the promoter or promoters without intending to take any further part or interest in the Company. When once the requisites of the Statute have been complied with, the

¹ *In re South Wales Atlantic Steamship Co.*, 1876, 2 Ch. D. 763.

² Act of 1862, sec. 6.

Act gives to a Company a legal existence with rights and liabilities of its own, whatever may have been the ideas or schemes of those who brought it into existence.

In a comparatively recent case,¹ familiarly known as the "one man Company" case, the House of Lords decided that when the Memorandum is duly signed and registered, the Company is by law a different person altogether from the subscribers to the Memorandum; and though it may be that after incorporation the business is precisely the same as it was before, and the same persons are managers, and the same hands receive the profits, the Company is not in law the agent of the subscribers or trustee for them. Nor are the subscribers as members liable in any shape or form except to the extent and in the manner provided by the Act. But the question was not decided whether it was incompetent for the creditors of a sole trader who had—to use not accurate legal language, but colloquial language—converted himself into a Company for the purpose of escaping personal liability, to impeach the transaction on the ground of fraud.²

Insurance Companies.—Insurance Companies—which include any Company that carries on the business of insurance in common with any other business or businesses³—must be registered under the Act.⁴

Companies formed to carry on the business of life assurance must deposit the sum of £20,000 with the Accountant-General of the Court of Chancery to be invested by him in one of the securities usually accepted by the Court for the investment of funds placed from time to time under its administration, the Company electing the particular security and receiving the income therefrom. The deposit is returned to the Company so soon as its life assurance fund accumulated out of the premiums amounts to £40,000.⁵

¹ *Salomon v. Salomon & Co.*, 1896, A. C. 22.

² *In re Carl Hirth*, 1899, 1 Q. B. 612.

³ Act, sec. 3.

⁴ Sec. 209.

⁵ Life Assurance Companies Act, 1870, sec. 3.

Penalty on Company not registering.—If any insurance Company as just defined makes default in so registering, then from and after the day upon which such Company is required to register until the day on which such Company is registered (which it is empowered to do at any time), the consequences provided by the Act ensue.¹

Friendly and Industrial Societies.—Such societies may convert themselves into Limited Liability Companies under the Companies Acts.

Trades Unions.—The Companies Acts do not apply to trades unions, and the registration of any trade union under the Acts is void.²

Foreign Companies.—A foreign Company or partnership is not within the purview of the Companies Acts. The reason is that the Legislature of this country has no power over the shareholders of such a Company. While a foreign Company cannot register under the Companies Acts, it may, however, lawfully carry on business in this country.

MEMORANDUM OF ASSOCIATION ³

The Memorandum as distinguished from the Articles of Association may be described as the charter of the Company. It must be signed by at least seven persons—but there is no objection to a larger number signing—in the presence of and be attested by one witness at the least. If the subscribers sign at different times and places, one witness must attest each signature. The designation and address of each subscriber must be adhibited after the signatures. The Memorandum may, for the purposes of registration, be either wholly written, printed, lithographed or engraved, or partly in one or partly in another of these ways. Any alteration or addition should be initialed by all the subscribers. Although all the subscribers

¹ For which see Act 1862, sec. 220.

² 34 & 35 Vict. c. 31, sec. 5.

³ For distinction between Memorandum of Association and Articles of Association, see p. 18.

usually sign for one share only, they may sign for as many shares as they desire to take.

It is important to observe that while the designation and address of a subscriber to the Memorandum may be filled in by anyone, the number of shares subscribed for should be holograph of the signatory.

Who may sign Memorandum.—Every person who is of full age and subject to no legal incapacity may validly sign the Memorandum.

Married Women.—A married woman may validly sign the Memorandum, and her own personal estate may be attached in fulfilment of the obligations she has thereby undertaken, provided she holds her estate exclusive of the *jus mariti* and right of administration of her husband, or that she signs the Memorandum with his consent in cases where these rights have not been excluded.

Minors may sign the Memorandum with the consent of their curators, if they have any, or if they have no curators they may subscribe alone ; but the contract so made may be set aside by the minor within the *quadriennium utile*, i.e. the period of four years commencing from the attainment of majority, during which an action of reduction may be brought by a minor on the ground of lesion of any deed granted or contract entered into by him during minority.

Foreigners.—A foreigner may competently sign the Memorandum.

Mandatories or Agents.—In England it has been decided that there being nothing in the Companies Acts to show that the Legislature intended anything special as to the mode of signature of the Memorandum, the ordinary rule applied that signature by an agent is sufficient. In the case referred to, A. authorised B. to sign on his behalf a Memorandum of Association of a Company. B. did so, but signed A.'s name without his own appended. The Company some time thereafter went into liquidation, and A. applied to have his name removed from the list of contributories in respect that he had never

signed the Memorandum; but the Court held he could not escape liability as B. had signed on his behalf; and though it was irregular for B. to sign A.'s name without denoting that it was signed by him as A.'s attorney, the signature was not on that ground invalid.¹ In Scotland, however, this point has not been decided under the Companies Acts; but under the Building Societies Act of 1874, which contains a somewhat similar provision as to the signatures of members, the question arose for determination, and it was decided that the word "signatures" means signatures of the members themselves, and that signatures adhibited by the mandatories of members could not be reckoned in calculating whether the instrument was signed by the requisite number of members.² It is thought that a like ruling would be given in cases under the Companies Acts.

Liability to pay for Shares subscribed for in Memorandum of Association.—A subscriber of the Memorandum of Association of a Company limited by shares is (in the absence of any provision in the Articles of Association, or of an express agreement between him and the Company to the contrary) not liable to make any payment in respect of the shares for which he subscribes, except as and when calls are made upon him in accordance with the provisions of the Articles.³

WHAT IS TO BE SPECIFIED IN MEMORANDUM.—The Act of 1862 specifies what is to be set forth in the Memorandum of Association. For Companies limited by shares, see sec. 8; for Companies limited by guarantee, see sec. 9; and for unlimited Companies, see sec. 10.

Attention will now be directed to the various statutory requirements.

THE NAME OF THE PROPOSED COMPANY.—Application should, early in the proceedings for the formation of a Company, be made to the Registrar to ascertain if there is any objection to

¹ *In re Whitley Partners Ltd.*, 1886, 32 Ch. 337.

² *South Edinburgh, etc., Building Society v. Aitken*, 1892, 19 R. 603.

³ *Alexander v. Automatic Telephone Co.*, 1900, 2 Ch. 56.

the proposed name. The Registrar will decline to register a Company part of the name of which is either "Queen," "Victoria," "Crown," "Royal," "Imperial," "Prince of Wales," or other name implying Royal patronage. But upon due cause shown the Secretary for Scotland in the case of Scotch Companies, and the Secretary of State for the Home Department in the case of English Companies, may sanction the use of the desired word.

By sec. 20 of the Act of 1862 it is provided that no Company is to be registered under a name identical with that by which a subsisting Company is already registered, or so nearly resembling the same as to be calculated to deceive, except in a case where such subsisting Company is in the course of being dissolved, and testifies its consent in such manner as the Registrar requires.

This statutory provision is but a declaration of the general law which prohibits one man from appropriating another's trade name. A new Company may take the name of a Company in course of liquidation, and that before the name of the old Company is taken off the register. To accomplish this, the consent of the old Company is essential. Such consent must be given on a form supplied by the Registrar, and signed by the liquidator, or two directors of the old Company, and countersigned by the secretary. The form when so signed is then lodged with the Registrar, impressed with a duty of 5s. A Company not registered under the Acts can prevent the registration under the Acts of a projected new Company which is intended to carry on the same business as the unregistered Company, and to bear a name so similar to that of the unregistered Company as to be calculated to deceive the public.

A few instances may be given where (1) interdict was not granted on the ground that there was not sufficient similarity in the two names necessarily to lead to the inference that there was an intention to deceive; and (2) where interdict has been granted.

(First) Interdict refused.—*The Merchants Banking Company of London Limited v. The Merchants Joint Stock Bank*

Limited ; *London and Provincial Law Assurance Society v. London and Provincial Joint Stock Life Assurance Company* ; *Colonial Life Assurance Company v. Home and Colonial Assurance Company Limited*.

(Second) *Interdict granted. — Madame Tussaud & Sons Limited v. Louis Tussaud Limited* ; *Universe Life Assurance Association v. Universal Life Assurance Society* ; *Manchester Brewery Company Limited v. North Cheshire and Manchester Brewery Company Limited*.¹

All Companies except those formed for purposes not of gain and with unlimited liability must have the word "Limited" as the last word in the Company name. It is not a compliance with the Act to use any abbreviation thereof.

The name of the Company must appear in full on the outside of every office where the Company carries on business, and must also appear on its seal, and on every document or advertisement issued by or on behalf of the Company, including bills, cheques, promissory notes, and other the like documents.² For non-compliance with these regulations, penalties are imposed.³

In one case, directors of a Company in accepting a bill omitted to use the word "Limited" in the Company name, and as the bill was dishonoured at maturity the Court found the directors personally liable, as the real name of the Company did not appear on the bill.⁴ The judges in disposing of the case said that secs. 41 and 42 of the Act were two of the most important sections, and the Court must take care not to relax them.

THE REGISTERED OFFICE OF THE COMPANY.—Every Company must have a registered office to which all communications and notices may be addressed.⁵ It is unnecessary in the Memorandum to state the postal address of the registered office. It is sufficient and is usual merely to state that the "Registered

¹ 1898, A. C. (H. L.) 83.

² For full statutory requirements, see Act 1862, sec. 41.

³ Act 1862, sec. 42.

⁴ *Atkins v. Wardle*, 5 T. L. R. 734.

⁵ Act 1862, sec. 39.

Office of the Company will be situate in" (England, Scotland or Ireland, as the case may be). Notice, however, of the situation of such registered office, and of any change therein, must be given to the Registrar, and recorded by him, as until this is done the Company is not deemed to have complied with the provisions of the Act with respect to having a registered office.¹

The notice as to the situation of the registered office should be given to the Registrar concurrently with the lodging of the Memorandum of Association. The notice must be given on a special form supplied by the Registrar, which requires to be stamped with a registration fee stamp of 5s.

OBJECTS OF THE COMPANY.—One of the most important matters to be kept in view in framing the Memorandum is the object for which the Company is to be incorporated. The Act provides that there must be stated in the Memorandum "the objects for which the proposed Company is to be established." The coming into existence of the Company is to be an existence for these objects, and these objects alone, until otherwise altered in competent form. In short, it states the ambit and extent of vitality and power which by law are given to the corporation, and it assumes that nothing shall be done beyond that ambit, and that no attempt shall be made to use the corporate life for any other purpose than that which is so specified. Hence its terms cannot be altered except to the extent provided for by Statute.

A contract made by the directors of a Company upon a matter not included in the Memorandum of Association is *ultra vires* of the directors, and is not binding on the Company. Nor can such a contract be rendered binding on the Company though afterwards expressly assented to at a general meeting of shareholders. Being in its inception void as beyond the provisions of the Statute, it cannot be ratified even by the assent of the whole body of shareholders.² But,

¹ Act 1862, sec. 40.

² *Ashbury Railway Carriage Co. v. Riche*, 1875, 7 H. L. 653.

on the other hand, a Company may do whatever is fairly incidental to those things which the Legislature has authorised and is ordinarily and reasonably done in such business as it carries on, unless the same is expressly prohibited in its deed of incorporation.¹

LIABILITY OF MEMBERS.—This differs according to the class of Company to which the member belongs. In Companies limited by shares, the partners are liable only for the amount if any unpaid on the shares registered in their names. In Companies limited by guarantee, the liability of members extends only to the amount they undertake to contribute to the assets of the Company in the event of their being called upon to do so. Between Companies limited by shares and Companies limited by guarantee there is a very material and important distinction. In the case of Companies limited by shares, the directors may at any time in their discretion—subject to any stipulation in the deed of incorporation to the contrary—call up from the shareholders the amount of the uncalled capital; whereas in Companies limited by guarantee the directors have no such power, and the members of the Company can only be called upon to make good their guarantee in the event of the Company going into liquidation. In Companies with unlimited liability the shareholders are jointly and severally liable in every farthing of the indebtedness of the Company. The statutory regulations as to the liability of members of Companies limited by shares and by guarantee will be found in sec. 38 of the Act of 1862.² These regulations naturally exclude Companies in which the liability of members is unlimited.

CAPITAL OF A COMPANY.—The Companies Acts treat the capital of a Company as one item, and take no cognisance of the various classes into which that capital may be divided. Such division is a subject of contract, and any preferences given to one class of shareholders over another class will receive effect. But, in the absence of any such contract, all

¹ *Attorney-General v. Great Eastern Ry. Co.*, 1880, 5 App. Cases, 473.

² For which see Appendix.

the members of the Company are deemed to have equal rights.

Money proposed to be raised by debentures should not be stated as part of the capital of the Company, for it is not capital, but a debt due by the Company to the lender.

The Memorandum of Association of a Company limited by shares must specify the amount of the capital with which the Company proposes to be registered. It is a sufficient compliance with the Act if the Memorandum merely states that "the capital of the Company is (say) £10,000 sterling, divided into 10,000 shares of £1 each." But any competent regulations made with reference to the capital in the Memorandum will receive effect. Hence it is usual to state whether any and what part of the original capital is to have a preference, and to specify whether the preference applies to dividend or capital, or to both.¹ It is also usual in this clause to reserve power to increase the capital of the Company by the creation of new shares, whether ordinary or preferential; but it is enough if this power be contained in the Articles. If there be no such provision, the Company cannot issue preference shares so as to entitle the allottees to a preference over the ordinary shareholders. Thus, in one case, preference shares were issued by a Company in whose Memorandum, or Articles, there was no provision for the issue of such shares. The Company went into liquidation, and it was decided that the allottees of the preference shares were not to be dealt with as ordinary shareholders, but as creditors of the Company, and were thus entitled to receive back the amount paid for the shares with interest from the date of the allotment, under deduction of the sums received in name of dividend on the shares.²

Where in the Articles it is provided that the preference shareholders are to be entitled to a preferential dividend of so much per centum per annum, and there is nothing said as to the manner in which arrears of interest are to be dealt with,

¹ *Ratray v. Smellie*, 1895, 22 R. 577.

² *Waverley Hydropathic Co. v. Barrowman*, 1895, 23 R. 136.

the mere circumstance that in any one year profits were not earned by the Company sufficient for the payment of the preference shareholders does not deprive them of the right to have their arrears of interest paid up when the Company again earns profits;¹ but interest is not payable on the arrears. Where, however, it is stipulated that the preference shareholders are only to be entitled to a preferential dividend out of the profits of each year, the dividend is not cumulative.

In the case of Companies limited by guarantee, or unlimited, the particulars as to the capital are stated in the Articles of Association.

GENERAL WORDS IN MEMORANDUM.—The concluding Article of the Memorandum of Association is usually couched in the following or similar language: "To do all such things as are incidental or conducive to the attainment of any of the aforesaid objects." In construing such general words, care must be taken to construe them so as not to make them a trap for unwary people. General words construed literally may mean anything; but they must be taken in connection with what are shown by the context to be the dominant or main objects. It will not do under general words to turn a Company for manufacturing one thing into a Company for importing something else, however general the words are. Two cases may be referred to as illustrative of this. In one case a Company formed for working a German patent for the manufacture of coffee from dates, and also for obtaining other patents for improvements and extensions of the said invention, was held not entitled to work a Swedish patent for a similar manufacture.² In the other case, a Company formed for working a gold mine in New Zealand was held not entitled to buy and work another mine instead, merely because its Memorandum of Association had the words "or elsewhere" added to the description of the mine.³

¹ *Partick, Hillhead, etc., Gas Co. Ltd.*, 1888, 18 R. 1017.

² *In re German Date Coffee Co.*, 1882, L. R. 20 Ch. 169.

³ *In re Haven Gold Mining Co.*, 1882, L. R. 20 Ch. 151.

DECLARATION OF ASSOCIATION. — The Memorandum must end with the declaration of Association, which in the case of Companies limited by shares is in the following terms :—

We, the several persons whose names and addresses are subscribed hereto, are desirous of being formed into a Company in pursuance of this Memorandum of Association ; and we respectively agree to take the number of shares in the capital of the Company set opposite our respective names.

Names, Addresses, and Descriptions of Subscribers.	Number of Shares taken by each Sub- scriber.
Seven persons at least will here sign the Memorandum, adding their full designations and addresses. Each signatory must subscribe for at least one share.	

Dated this 1st January 1901.

Witness to the above signatures,

F. H. ALLAN, *Solicitor*,

1 W. George Street, Glasgow.

ARTICLES OF ASSOCIATION

DISTINCTION BETWEEN MEMORANDUM OF ASSOCIATION AND ARTICLES OF ASSOCIATION.—The Memorandum is the charter, and defines the limitation of the powers of the Company. The Articles, on the other hand, play a part subsidiary to the Memorandum. They accept the Memorandum as the charter of incorporation, and so accepting it the Articles proceed to define the duties, the rights, and the powers of the governing body as between themselves and the Company at large ; the mode and form in which the business of the Company is to be carried on, and the mode and form in which changes in the internal regulations of the Company are from time to time

to be made. The Memorandum cannot be extended by the Articles to objects foreign to its scope, nor can it be altered except to the limited extent provided by Statute. The Articles, on the other hand, can be altered by special resolution of the Company to an almost unlimited extent, but the directors cannot by any resolution of their own alter the Articles. It is not competent for the Company to except any Article from alteration. The Memorandum and Articles as contemporaneous documents must be read together, so that if there is any ambiguity in the one, the other may explain or interpret it. If the Memorandum be silent on a matter not required to be stated therein, the Articles may supplement it.

If anything is done by the Company which is not warranted by the Memorandum, the question will arise whether that which is so done is *ultra vires* not only of the directors, but of the Company itself. With regard to the Articles, if there is anything done which, still keeping within the Memorandum, is a violation of the Articles or in excess of them, the question will arise whether that is anything more than an act *extra vires* the directors, but *intra vires* of the Company.¹

The statutory regulations with regard to the Articles are contained in the Act of 1862.² In the case of a Company limited by shares the Memorandum may be, and usually is, accompanied, when registered, by Articles of Association. Where no Articles are so registered, or where the registered Articles have become unworkable, the Articles in Table A,³ scheduled to the Act of 1862, are held to be the Articles of Association of the Company. But if Articles have been registered, and these do not exclude or modify the regulations of Table A, such regulations also apply to the Company. Some Companies adopt *simpliciter* the regulations of Table A; others, again, provide that none of the regulations contained in the Table, except in so far as "such regulations are embodied in these Articles, shall apply to this Company"; while

¹ *Ashbury Railway Carriage and Iron Co. Ltd. v. Riche*, 1875, 7 H. L. 653.

² Secs. 14-16.

³ For which see Appendix.

others, again, provide that "the following shall be the Articles of Association of this Company to the entire exclusion of Table A." Where the regulations of Table A are adopted, these need not be printed and registered; but where these regulations are excluded, the Articles of the Company must be printed and registered. Where Table A is in part adopted, such adopted parts need not be printed and registered. When the regulations of Table A are excluded, and when there is no provision in the Articles of the Company as to the votes of the members or the meetings of the Company, such matters are regulated by sec. 52 of the Act of 1862.

In the case of Companies unlimited, or limited by guarantee, the Memorandum must, when registered, be accompanied by Articles of Association.

The Articles when registered bind the Company and the Members thereof to the same extent as if each Member had subscribed his name and affixed his seal thereto.

The Articles taken by themselves are simply a contract between the shareholders *inter se*, and do not confer any right of action to a person not a party to the Articles, although named therein. A case may be cited as illustrative of this. The Articles of a Company contained a clause in which it was stated that a certain named person should be solicitor to the Company, and should transact all its legal business, for the usual fees, and should not be removed from his office unless for misconduct. The Articles were signed by seven members and were duly registered, and the Company incorporated. The person so named acted as solicitor for some time, but ultimately the Company ceased to employ him, and employed other solicitors. He then brought an action against the Company for breach of contract in not employing him as a solicitor in terms of the Articles; but it was decided that the Articles were a matter between the shareholders *inter se*, or the shareholders and the directors, and did not create any contract between the pursuer and the Company.¹

¹ *Eley v. Positive Government Security Life Assurance Co.*, 1876, 1 Ex. D. 88.

A provision in the Articles that no share shall be transferred to any person not being a manager or assistant in the Company so long as any manager or assistant is willing to purchase the same at a fair value is valid, and that although the holder of the shares may become bankrupt.¹ If the Articles so provide, the directors have an absolute and unconditional right to decline to register any successor to a deceased member other than a purchaser.² In view of the statutory power to alter Articles by special resolution of the Company, an alteration so made upon the Articles is effectual against the executors of a deceased shareholder, although the alteration is made (1) after the death of the shareholder, and (2) after a demand has been made by his executors, which could not have been resisted by the Company had the Articles remained unaltered.³

SIGNING OF ARTICLES.—The regulations before explained⁴ as to the signing of the Memorandum apply to the signing of the Articles, with this exception, that in the case of Companies limited by shares, the subscribers need not add the number of shares they are to take. In the case of a Company limited by guarantee, but having a capital divided into shares, and in the case of an unlimited Company, the number of shares taken by each subscriber must be added to the subscriptions.

STAMP DUTY ON MEMORANDUM AND ARTICLES AND OTHER FEES PAYABLE ON REGISTRATION.—The Memorandum of Association must within thirty days of the date of the first subscription be stamped with a deed stamp of 10s. The Articles of Association must be stamped with a like duty of 10s., and when presented to the Registrar of Joint Stock Companies must be further stamped with a registration fee stamp of 5s. Accompanying the Memorandum, there must also be lodged, duly filled up, a form supplied by the

¹ *The Trustee in Bankruptcy of J. E. Borland v. Steel Bros. & Co. Ltd.*, 1900, 17 T. L. R. 45.

² *Moir v. Thomas Duff & Co. Ltd.*, 1900, 37 S. L. R. 935.

³ *Allan v. Gold Reef of West Africa Ltd.*, 1900, 1 Ch. 656.

⁴ See p. 9.

Registrar called "Statement of Nominal Capital." Upon this, stamp duty is payable at the rate of 5s. for every £100 and any fraction of £100 over any multiple of £100 on the nominal capital of the Company. Penalties are imposed for non-compliance with this provision.¹

REGISTRATION OF MEMORANDUM AND ARTICLES OF ASSOCIATION.—The Memorandum and Articles of Association are registered at the office of the Registrar of Joint Stock Companies in London, Edinburgh, or Dublin, according to the place where the registered office of the Company is situated. If everything is found in order, the Registrar subsequently issues a certificate that the Company has been duly incorporated under the Acts, and that the Company is "Limited." The incorporation of the Company takes effect from the date of incorporation mentioned in the certificate.

Effect of Certificate.—The certificate of the Registrar is conclusive evidence that all the requisitions of the Acts in respect of registration, and of matters precedent and incidental thereto, have been complied with. This provision, introduced by the Act of 1900, will, it is thought, prevent any certificate being set aside on the ground that the Memorandum has not been signed by the requisite number, or that certain of the signatures are forged.

A statutory declaration by a solicitor engaged in the formation of the Company, or by a director or secretary, of compliance with all or any of the requisitions, is required to be produced to the Registrar, who may accept the declaration as sufficient evidence of such compliance.² (*As to effect of Registration*, see sec. 18 of Act of 1862.)

Lost Certificate or additional Certificate required.—Any person may demand from the Registrar a certificate of the incorporation of a Company on payment of a fee not exceeding 5s.³ Such certificate is received in evidence

¹ Stamp Act, 1891, sec. 112, as altered by Finance Act, 1899, sec. 7.

² Act 1900, sec. 1. As to penalty for false statement, *ibid.* sec. 28.

³ Act 1862, sec. 174 (5).

in all legal proceedings, civil or criminal, as if it were the original document.¹

COMPANIES LIMITED BY GUARANTEE

Companies limited by guarantee afford a convenient form for clubs and associations not requiring the capital or the interests of the members to be expressed in cash terms; and while in practice the use of this form of incorporation is almost exclusively taken advantage of by such associations, there is nothing impracticable or incompetent in its adoption by trading and other Companies.

Where a Company is formed on the principle of having the liability of its members limited by guarantee, the amount for which a member is responsible is a sum not exceeding a specified amount which he undertakes to contribute to the assets of the Company in the event of the same being wound up during the time that he is a member, or within one year afterwards, for payment of the debts and liabilities of the Company contracted before the time at which he ceased to be a member, and of the costs, charges, and expenses of winding up the Company, and for the adjustment of the rights of the contributories among themselves.² The amount of the liability is required to be stated in the fourth Article of the Memorandum of Association at so much per member, but there is no limit to the sum the members may so subscribe. In the winding up of a Company limited by guarantee, a member is only liable to be placed on the list of contributories in respect of the amount which by the Memorandum he has undertaken to contribute in the event of its being wound up. Although he may be sued for sums which he is only bound to pay under the Articles, he is not liable as a contributory in respect of such sums.³ When a member retires and his place

¹ Act 1877, sec. 6.

² Act 1862, sec. 9.

In re Bangor and North Wales Mutual Marine Protection Association, 1899, 2 Ch. 593.

is not taken up by another, the position of the creditors of the Company is thereby weakened to the extent of that member's guarantee.

Section 9 of the Act of 1862 specifies what is to be contained in the Memorandum, and in the Second Schedule to the Act models (Forms B and C) are given of Memoranda and Articles of Association. In this connection there is a difference between Companies limited by shares and Companies limited by guarantee, that whereas in the former case Articles of Association need not accompany the Memorandum when lodged for registration, in the latter case the Memorandum must be accompanied by Articles, and these must be printed.

The Act of 1862 contemplates two classes of Companies limited by guarantee, viz. Companies either having or not having a capital divided into shares. In both cases the amount of the guarantee of the members alone requires to be stated in the Memorandum. In the case of a Company not having a capital divided into shares, the Articles must state the number of members with which the Company proposes to be registered, for the purpose of enabling the Registrar to determine the fees payable on registration.¹ Where in the Articles provision is made for the division of the undertaking into shares or interests, and for the transmission of such shares, although no special provision is made for a share capital, it would now seem that Companies with such regulations must be regarded as having a capital divided into shares.² Every provision in the Memorandum or Articles of Association or in any resolution of a Company registered after the 1st January 1901, purporting to give any person a right to participate in the divisible profits of the Company otherwise than as a member, is void.³

Under the Act of 1862, when a Company had a capital divided into shares, the Articles alone required to specify the amount of the capital and the shares into which that capital was divided, with this result, that the Company could by special

¹ Sec. 14.

² Act 1900, sec. 27 (2).

³ Act 1900, sec. 27 (3).

resolution alter the capital of the Company from time to time¹ without the necessity of applying to the Court for confirmation, as is necessary in the case of a Company limited by shares where an alteration of the capital necessitates an alteration of the Memorandum. An important alteration in the law in this respect has been made by the Companies Act, 1900,² which provides that no Company limited by guarantee, registered after 1st January 1901, shall be capable of having a capital divided into shares, unless the Memorandum of Association so provides and specifies the amount of its capital (subject to increase or reduction in accordance with the Companies Act) and the number of shares into which the capital is divided. Such Companies must pay before registration *ad valorem* duty on the nominal amount of their share capital in the same way as Companies limited by shares.³

BOOKS REQUIRED TO BE KEPT.—The following are the statutory requirements as to the books to be kept by Companies limited by guarantee, and they are all contained in the Act of 1862, viz.: (1) Register of Members (sec. 25); (2) Register of Mortgages (sec. 43); (3) where the Company has not a capital divided into shares, a Register containing the names, addresses, and the occupations for the time being of its directors and managers (sec. 45). A penalty for failure to observe this provision is contained in sec. 46.

RETURNS TO BE MADE TO REGISTRAR.—(1) Notice of the situation of the registered office (sec. 40). (2) A copy of every special resolution passed by the Company. Where the Company has not a capital divided into shares, the following returns require also to be made:—(1) Notice of any increase in the number of members beyond the registered number (sec. 34). (2) A copy of the Register above referred to (number 3). Where the Company has a capital divided into shares, the returns to be made are the same as those for ordinary Companies limited by shares.

¹ Act 1862, sec. 50.

² Sec. 27 (1).

³ For amount thereof, see p. 22.

ASSOCIATIONS FORMED FOR PURPOSES NOT OF GAIN

If a Company about to be formed proves to the Board of Trade that it is formed for the purpose of promoting commerce, art, science, religion, charity, or any other useful object, and that it is the intention of such association to apply the profits, if any, or other income of the association, in promoting its objects, and to prohibit the payment of any dividend to the members of the association, the Board of Trade may, by licence, direct such association to be registered with limited liability, without the addition of the word limited to its name.¹

HOW TO OBTAIN THE LICENCE OF THE BOARD OF TRADE.—Two copies, printed on foolscap paper, of the proposed Memorandum and Articles of Association must, before being signed, be submitted for the consideration of the Board of Trade. The names, designations, and addresses of the promoters of the Company, or the persons who will sign the Memorandum and Articles of Association, must also be sent. The fees to counsel, usually five guineas, for revising the Memorandum and Articles on behalf of the Board of Trade, should accompany the application.

When the deed has been approved of by the Board of Trade, one of the copies is returned with such amendments as the Board considers necessary. At the same time an order is made requiring the application to be advertised in one or more newspapers circulating in the district where the Company proposes to carry on its operations. If no objection is made within the stipulated time, or if an objection is repelled, and on the Board's requirements being satisfied, a licence is granted.

When the Memorandum and Articles have been signed and stamped they and the licence by the Board of Trade and a notice of the situation of the registered office of the Company, are sent to the Registrar of Joint Stock Companies.

¹ For particulars applicable to such Companies, see Act 1867, sec. 23.

STAMP DUTY AND FEES.—A 10s. deed stamp must be impressed before registration on both the Memorandum and Articles. A registration fee of 5s. is payable on both the Articles and notice of the situation of the registered office. The fees payable on the Memorandum are regulated by the number of members the association is declared to consist of in the Articles. Thus for registration of a Company whose number of members as stated in the Articles does not exceed twenty, the fees are £2.

UNLIMITED COMPANIES

Few Companies now register with unlimited liability. With the exception of those parts of the Acts relating to limited liability, the provisions of the Companies Acts, generally speaking, apply to unlimited Companies. The shareholders of such Companies are liable, according to their interests in the Company, to pay all the debts and fulfil all the obligations of the concern. But a contributory in the winding up of an unlimited Company has right of compensation which is un-availing to a contributory of a limited Company.¹ Further, an unlimited Company may purchase its own shares, and thereby reduce its capital without the authority of the Act of 1867.²

The following points of difference with regard to the formation of unlimited Companies as compared with limited Companies may be noted:—(1) The Memorandum is required only to specify the name of the proposed Company, the registered office, and the objects of the Company, but not the capital;³ (2) the capital is required to be stated in the Articles, and the members require to subscribe for one share at the least;⁴ (3) the name of the Company does not require to be published

¹ Act 1862, sec. 101; confirmed, Act 1867, sec. 6. *In re Pyle Works*, 1890, 44 Ch. D. 534.

² *In re Borough Commercial and Building Society*, 1893, 2 Ch. 242.

³ Act 1862, sec. 10.

⁴ Act 1862, sec. 14.

at its place of business or on its business paper;¹ and (4) the Company does not require to keep a Register of Mortgages.

The returns to be made to the Registrar are the same as those for Companies limited by guarantee.²

Unlimited Companies may re-register with limited liability.—
For mode of so doing, see Companies Act, 1879, sec. 4.

¹ Act 1862, sec. 41.

² For which see *ante*.

CHAPTER III

FLOATING OF COMPANY

PROMOTERS.—In the previous chapter the statutory requirements necessary for the incorporation of those Companies which can legally be formed under the Companies Acts were sketched. Attention will now be directed to the legal position of those who set in motion the machinery of the law towards the establishment of a Company.

The formation of a Company must from its very nature be in almost all cases the work of one or more individuals, and the name familiarly given to the pioneers of the concern is "Promoters." The term "promoter" is a term not of law but of business, usefully summing up in a single word a number of business operations familiar to the commercial world, by which a Company is generally brought into existence.¹

No hard-and-fast rule can be stated as to who is or who is not a promoter, but the position of persons concerned in the floating of a Company is well defined, and it is this—They stand in a fiduciary position; they have in their hands the creation and moulding of the Company; they have the power of defining how and when and in what shape and under what supervision it shall start into existence and begin to act as a trading corporation. Hence everything that a promoter does must be done with the utmost fairness. No promoter is entitled to receive any secret commission or remuneration

¹ Per Bowen, L. J., in *Whaley Bridge v. Green*, L. R. 5 Q. B. D. 109.

in connection with the promotion or formation of the Company. A promoter is in the same position as an ordinary agent, and cannot receive for himself any benefit derived from the subject on which he is employed without disclosing the fact to his principal. If a promoter has a property which he desires to sell to the Company, it is quite open to him to do so; but upon him, as upon any other person in a fiduciary position, it is incumbent to make a full and a fair disclosure of his interest and position with respect to that property.

The law does not prohibit any person concerned in the floating of a Company, be he promoter or not, from receiving remuneration, but what it does prohibit is the receiving of such remuneration clandestinely. The reason for this is that when a Company is incorporated, its charter prescribes its duties and declares its rights, and all persons becoming shareholders have a right to consider that they are entitled to all the benefits held out to them in the charter, and liable to no obligations beyond those which are there indicated. When a person, believing in the probable success of any particular project, is satisfied with the terms of incorporation, he reasonably advances his money on the faith of those terms, and if the project turns out a failure he has no right to complain. The speculation was one as to the prudence of which he had the means of judging, and no injustice is done to him if in the result he sustains a loss. But the case is very different if behind the disclosed terms of incorporation there are others of which the public have no notice, but which are to be held equally binding on the shareholders as if they had formed part of the charter of corporation. Where there is an agreement to pay someone remuneration which has not been indicated in the deed of incorporation, no approval of those who may happen to be directors at the time when the Company is formed, or of those who may happen at that time to be all the shareholders in the Company, can possibly give it validity, because it is something which the Company itself cannot do,

and which it cannot be authorised to do, either by its then directors or by its then shareholders.¹

PRELIMINARY AGREEMENT.—The next matter calling for attention is the contract or agreement whereby the new Company is to get the benefit of or the right to the business to be taken over or commenced by the Company. This is accomplished by what is known as the “preliminary agreement,” and is usually arranged before the issue of the prospectus.

The terms of the deed should be carefully and accurately adjusted. Those acting for or on behalf of the Company will see that the seller has right to dispose of the business, that his title thereto is good, that the property in question really exists, that if the Company is to work a patent the patent is valid, and such other details as are usually observed in agreements for sale. Again, the price to be paid should be specifically stated, and the mode of payment set forth. Thus in one case where part of the purchase price was to be “£1000 worth of shares” in the new Company, it was held that this meant shares to the market value of £1000, and not shares of the face value of that amount. As regards the seller, he should see that if the purchase price is not to be paid in cash but in shares, the agreement is filed with the Registrar of Joint Stock Companies within one month after the allotment.² A failure to comply with this requirement does not prejudice the position of the allottee nor make the shares liable to be treated as unpaid. It only subjects the officers of the Company to the penalties provided by the Act.³

The agreement usually takes one or other of the following forms:—(1) An agreement between the vendor and a trustee for the proposed Company, with a provision therein that in the event of the Company not adopting the agreement it is to be of no effect; or (2) a draft agreement adjusted by the vendor

¹ Act 1900, sec. 9, and *Mann & Beattie v. Edinburgh Northern Tramways Co.*, 1892, 19 R. H. L. 7.

² Act 1900, sec. 7 (1).

³ *Ibid.* sec. 7 (2).

directly with the Company. Whichever course is adopted, the deed of incorporation of the Company contains power enabling the directors to adopt the agreement, and so make it binding upon the Company. But a Company is not bound by a contract made for or on its behalf before incorporation, unless after incorporation the Company acquires the rights or submits itself to the obligations of the contract. Of the two courses the first is the better, and for this reason—if the contract is in draft and is not executed before the Company is incorporated, the vendor not being legally bound may decline to proceed therewith unless upon better terms; whereas when the agreement is duly signed, he cannot resile from the bargain unless power to do so is contained in the agreement, if the Company when incorporated is prepared to carry out its terms.

Adoption of Agreement.—When the agreement is merely in draft no question of adoption can arise, for there is no existing contract to adopt. But when a contract has been made between the vendor and a trustee for the Company the question of adoption is of importance, for until then the Company cannot enforce its terms. Between the laws of England and Scotland, upon this point, there is a material distinction. In England a Company cannot ratify a contract entered into on its behalf before incorporation, because ratification in the strict sense of the term refers to an act previously done for the person ratifying, and cannot apply to an act done before that person came into existence.¹ The practice in England is to have a new contract entered into on the same terms as the original contract. In Scotland the law is not so stringent, and ratification of such a contract is competent, but the person seeking to enforce it must prove that the Company has voluntarily adopted the contract. It is sufficient if the actings of parties necessarily lead to the inference that they intended to be, and held themselves out as being, bound by its terms.

There is nothing incompetent in Scotland in the Company after incorporation adopting by a formal deed the original

¹ *The Bagot Pneumatic Tyre Co. Ltd.*, 1900, 17 T. L. R. 117.

contract. This should be done, or a minute by the directors should be passed and communicated to the other party to the contract formally adopting the same.

Stamp Duty.—By the Stamp Act of 1891¹ it is provided that agreements for the sale of property to a Company are to be charged with *ad valorem* duty as conveyances on sale, i.e. 10s. per cent. From such property the following exemptions are made, viz. heritable property, the duty being paid on the disposition thereof to the new Company; property locally situate out of the United Kingdom, on which no duty is chargeable here; goods, wares, and merchandise, including moveable plant, all which pass by delivery without a conveyance; stock or marketable securities, the duty on which is payable on the transfer thereof; or any ship or vessel, or part interest, share, or property of or in any ship or vessel, no duty being payable on a bill of sale thereof.

In regard to goodwill, if it be specified in the agreement as included in the sale, *ad valorem* duty is payable on the value thereof.

In one case where a private partnership conveyed its whole assets to a Joint Stock Company limited by shares consisting exclusively of the same partners, in consideration of each partner getting shares in the new Company equal in value to his holding in the old partnership, it was decided that the conveyance was a conveyance on sale within the meaning of the Stamp Act, and that the disposition was chargeable with *ad valorem* stamp duty on the value of the stock transferred.²

PROSPECTUS.—The object of a prospectus is, generally speaking, to make known the new Company, and to induce persons to contribute their money for its purposes. It is obvious, therefore, that such a document should be expressed with perfect veracity and issued in good faith. To sanction or to permit any violation or neglect of these essential condi-

¹ Sec. 59.

² *John Wilson & Son Ltd. v. Inland Revenue*, 1895, 23 R. 18. See also *John Foster & Sons v. Inland Revenue*, 1894, 1 Q. B. 516.

tions would be to encourage proceedings which might soon prove intolerable, and would expose that numerous class of persons who are but too willing to invest their money in undertakings which seem to hold out a fair prospect of reasonable and honest profit, to the arts of projectors desirous of taking advantage of their credulity. The Courts of law have without hesitation denounced the practice of issuing prospectuses which are untrue, and have declared the contract into which shareholders have entered in reliance upon the truth of such representations to be null and void in cases where they turned out to be untrue or delusive, or deficient in any of the conditions essential to the formation of a binding engagement.

In the Companies Act of 1900¹ stringent regulations have been made as to what is to be stated in the prospectus. In the event of non-compliance with the provisions of the Statute, the directors and other persons responsible for the statements contained in the prospectus incur personal liability for any loss arising therefrom, unless they can show that as regards any matter not disclosed they were not cognisant thereof, or that the non-compliance arose from an honest mistake of fact on their part.

REMEDY OF PERSON WHO BUYS SHARES ON REPRESENTATIONS MADE BY COMPANY OR OTHERS ON ITS BEHALF.—It is a general rule of law, applicable alike to shares bought in public Companies as to all other things which form the subject of sale, that a person who has been deceived into purchasing by false and fraudulent representations on the part of the seller, is entitled to have the contract set aside and to be restored to his original position. But the applicability of this rule to any particular case depends on circumstances. Hence, where a person has by untrue statements or the concealment of material facts in a prospectus been induced to buy shares in a public Company, his remedy may, at his option, either be the rescinding of the contract or a claim for damages against those who made the representations following upon which he bought

¹ For which see Appendix, and secs. 9-11.

the shares. If necessary, however, for full indemnity the shareholder is entitled to have recourse to both remedies. It is to be kept in view that the offer to take shares is an offer to take them on the terms of the prospectus and on no other terms, and the acceptance of the application by the allotment of the shares is the acceptance of the offer on those terms and on no other. The prospectus, therefore, is the basis of the contract between the shareholder and the Company.

RESCISSION OF THE CONTRACT.—This remedy is only competent to the person who applied for and was allotted the shares, and does not extend to a purchaser from him. The proceedings are against the Company to have the shareholder's name removed from the list of shareholders, and are only competent so long as restitution is possible, that is, as long as the party seeking it is able to put those against whom it is asked in the same position as that in which they stood when the contract was entered into; but with this qualification, that if in the knowledge of the fraud the shareholder continues to hold the shares for an unreasonable length of time, he cannot thereafter repudiate the transaction. Further, if while still ignorant of the untrue statements made, a material change takes place affecting the Company, as by its liquidation, whether voluntary or otherwise, the shareholder cannot repudiate his shares, nor can he recover from the Company the amount paid by him therefor. Further, a person may be barred by his own actings from subsequently succeeding in setting aside the contract. Thus, if for a lengthened period he draws dividends, attends meetings of the Company, and takes part in proceedings affecting it, he cannot thereafter claim restitution.

If a person discovers that he has been induced to take shares in a Company on statements which he has ascertained to be untrue, and before any material change has taken place, and while it is yet possible to restore matters to their former position, and he immediately institutes proceedings, he is

entitled to have his name removed from the list of shareholders, and to have repaid to him by the Company the amount paid for the shares. And while he would not be entitled to commence his action after the Company had gone into liquidation, still, if the action is commenced before liquidation, the shareholder is entitled to prevail, although no decision in the action has been given until after the commencement of the liquidation; with this qualification, that if the Company is declared insolvent at the time of the institution of the proceedings, the right to rescind is lost.

In order to entitle a shareholder to revoke his contract it is sufficient for him to prove that in the prospectus there was a material misrepresentation in fact, upon the faith of which he applied for and took up the shares allotted to him. But where there has only been an innocent misrepresentation, it is not a ground for a rescission of the contract, unless a complete difference in substance between the thing bargained for and that obtained can be proved.

There is no obligation upon a shareholder who discovers that there has been a misrepresentation to take proceedings to have his name removed from the list of shareholders. It may be to his interest to hold the shares, and if he elects to do so, there the matter ends. But he cannot continue his membership in the knowledge of the misrepresentation in the hope that the Company may succeed, but if it does not do so, reserve to himself the power to have his name removed. Nor can he remain passive when another shareholder similarly situated is taking proceedings to have his name removed, as in such a case the silent shareholder is barred by delay from obtaining the like relief, unless after notice of the misrepresentation he promptly informs the Company of his intention to claim the benefit of the decision in the first action. It has been decided that a person is entitled to claim restitution even after his shares have been forfeited for non-payment of calls.

Generally stated, to make a Company liable for misrepresentations inducing a contract to take shares from it, the shareholder

must bring his case within one or other of the following heads :—

(1) That the representations were made by the directors or other the general agents of the Company entitled to act and acting on its behalf—as, for example, by a prospectus issued by the authority or sanction of the directors of a Company inviting subscriptions for shares.

(2) That the representations were made by a special agent of the Company while acting within the scope of his authority—as, for example, by an agent specially authorised to obtain on behalf of the Company subscriptions for shares. This head, of course, includes the case of a person constituted agent by the subsequent adoption of his acts.

(3) That the Company can be held affected before the contract is complete with the knowledge that it is induced by misrepresentations—as, for example, when the directors on allotting shares know in fact that the application for them had been induced by misrepresentations even though made without any authority.

(4) That the contract was made on the basis of certain representations, whether the particulars of those representations were known to the Company or not, and it turns out that some of those representations were material and untrue—as, for example, if the directors of a Company knew when allotting that an application for shares was based on the statements contained in a prospectus even though that prospectus was issued without authority, or even before the Company was formed, and even if its contents were not known to the directors.¹

ACTION OF DAMAGES.—This remedy is not competent against the Company, since the shareholder being still a member of the incorporation it is inconsistent with his position. The right to claim damages continues even after the Company has gone into liquidation. The persons against whom the action requires to be directed, and the material facts which a share-

¹ *Lynde v. Anglo-Italian Hemp Spinning Co.*, 1896, 1 Ch. 178.

holder must prove to recover damages, are now mainly regulated by the Directors Liability Act of 1890,¹ which extended the personal responsibility of persons issuing prospectuses.

Before the Act, the law as laid down in a case decided in the House of Lords² was that a director was not liable for an untrue statement if when he made it he honestly believed it to be true; that for a negligent representation as distinguished from a fraudulent representation there was no liability, and that there must be the *mens rea* to ground an action for deceit. It was further necessary to prove that the person sued made the statement himself. But the Act of 1890 has extended this. Sec. 3 first of all enlarges the class of persons liable for a misrepresentation in a prospectus. It is not the person who made it who is alone liable, but every person who was a director at the time of issuing the prospectus, and every promoter of the Company, and every person who authorised the issue of the prospectus, is now liable to pay compensation for any loss occasioned by "any untrue statement." To escape liability under sec. 3 the person who makes or is party to a statement must show he had "reasonable ground" for believing, and did in fact believe, that the statement was true. What, then, is "reasonable ground"? Honest belief will not suffice: it must be shown that the belief was not only *bonâ fide*, but based on reasonable grounds. If the statement is made carelessly though under an honest belief in its truth, the liability attaches.³

UNDERWRITING AGREEMENTS.—Should there be any risk of the shares not being sufficiently subscribed for by the public so as to entitle the directors⁴ to proceed to allotment, recourse is had to the underwriting of a certain number of the shares. The commission agreed to be paid therefor is a legitimate charge against the Company. It was long thought that such a procedure was illegal, but the Courts confirmed the practice,

¹ For which see Appendix.

² *Derry v. Peek*, 14 App. Cases, 337.

³ *Greenwood v. Leather Shod Wheel Co.*, 1899, 1 Ch. 421.

⁴ Act 1900, sec. 4 (1).

and it is now expressly sanctioned by the Companies Act, 1900. To entitle the directors to charge the payment of the commission against the Company, the payment of the commission and the amount or rate per cent. thereof must be authorised by the Articles of Association and disclosed in the prospectus.¹ Unless this is done no Company can apply any of its shares or capital money either directly or indirectly in payment of any commission, discount, or allowance to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares of the Company.² This does not, however, prevent a vendor paying to the underwriter any sum he pleases, so long as the Company is not charged with the payment thereof.

Form of Underwriting Agreement.—The following is a fair example of an underwriting agreement, which may be made either directly with the Company or with the promoters, viz. :—
“I agree for the consideration hereinafter stated, at any time within three months from the date hereof if and as called upon by you, to subscribe or find responsible subscribers for any number of shares of £ . . . of this Company you may require not exceeding . . . in accordance with the terms of the prospectus dated . . . and to pay or cause to be paid the instalments upon the said shares in accordance with the terms of the said prospectus. In consideration whereof you are to pay me a commission of . . . per cent. in respect of each of the said shares. If upon the publication of the prospectus the shares offered to the public are partially subscribed for by the public, my liability is to be proportionally reduced so that I shall only be bound to subscribe or find subscribers rateably with the other persons or firms who shall have underwritten the shares or any portion of the shares of the Company. If the whole of the shares so offered are subscribed for by the public I shall be under no liability in respect thereof, but in any event I shall be entitled to receive the whole amount of the said commission upon the said shares.”

¹ Act 1890, sec. 8 (1).

² *Ibid.* sec. 8 (2).

The foregoing letter is sufficiently stamped with a duty of sixpence.

Whatever the arrangement is it should be stated in plain and just language, as before an underwriter can be held responsible the conditions specified to in the letter must be implemented.¹ An agreement can be embodied in the letter empowering the person to whom it is addressed to apply for shares in the underwriter's name should he fail to do so when called upon.

Like all other contracts, the offer of an underwriter must be accepted, and the acceptance communicated to the offerer.

¹ *In re Harvey's Oyster Co. Ltd.*, 1894, 2 Ch. 474. *Ex parte Audain*, 42 Ch. D. 1. *Paul Boyer Ltd. v. Edwards*, 1900, 17 T. L. R. 16.

CHAPTER IV

SHARES IN COMPANIES AND THE PAYMENT THEREOF

WHAT IS A SHARE IN A COMPANY.—“A share in a Company,” says M. R. Lindley, p. 449, “signifies a definite portion of its capital . . . a definite portion of the joint estate after it has been turned into money and applied as far as may be necessary in payment of the joint debts. But it includes a right to receive dividends, and ordinarily it confers a right to vote.”

APPLICATIONS FOR SHARES: HOW MADE.—Applications for shares are usually, although not invariably, made upon printed forms issued along with the prospectus. A letter applying for shares, or even a verbal application, is sufficient. Where shares are applied for by one person on behalf of another, the directors should be satisfied that the applicant has authority to act in the manner he proposes.

ALLOTMENT OF SHARES. — Important alterations have been made on the law with regard to the allotment of shares by the Companies Act of 1900,¹ to which reference is made. The Act specifies the amount that must be subscribed before the directors can go to allotment, the amount payable on application, the repayment of such application money in the event of the requisite subscriptions not being obtained, and enacts that any condition requiring or binding any applicant for shares to waive compliance with any requirement of sec. 4 is void. Further, when an allotment is made, the Act provides

¹ For which see Appendix.

for a return thereof being filed with the Registrar of Joint Stock Companies under the penalties provided for.¹

Notice required to be given to Directors of Meeting to allot Shares.—Due notice must be given to all the directors of the meeting at which the shares are to be allotted. If this is not done the allotment may be set aside.² But if the allotment made by an insufficient number of directors is subsequently ratified by the directors at a full board meeting, the ratification relates back and makes the allotment good, though an applicant has in the meanwhile withdrawn his application.³

In sending out the letters of allotment the shares need not be numbered.

Agreement to take Shares: Time when Person becomes liable as a Shareholder.—When a Company is in course of formation, and applications for shares are invited, a person does not become liable as a shareholder by the mere fact of his applying for shares. Before he incurs such a liability there must be a binding bargain with him to that effect. The bargain is usually, although not invariably, completed by the application of a person, or by someone duly authorised by him, for shares, and the allotment thereof to him by the Company. No new term should be introduced into the acceptance, as thereby the allottee may repudiate the contract. No binding contract is made if a less number of shares is allotted than that applied for, unless power to do so is reserved by the directors.

Withdrawal of Application.—Up to the time of the posting of the letter of allotment or communication otherwise of the acceptance of the offer, the application for shares may be withdrawn; and the withdrawal can be effected by a notice in writing, by verbal communication, or actings showing that the person desires his application to be held as withdrawn. Unlike the effect of the posting of a letter of allotment,⁴ a notice of withdrawal dates only from the time when the fact of the

¹ Sec. 7 (2). As to penalty for false statement, *ibid.* sec. 28.

² *In re Homer District Consolidated Gold Mines*, 1888, 39 Ch. D. 546.

³ *In re Portuguese Copper Mines*, 1889, 42 Ch. D. 161.

⁴ See *infra*.

withdrawal is made known to the Company.¹ The notice should be sent to the registered office of the Company. It has been decided that a clerk in the registered office of a Company is, during business hours, and whilst the secretary is absent, so far in charge of the office that he has authority to receive a notice so as to make it a communication to the Company.²

Acceptance of Offer.—When a person applies for shares, and shares are allotted to him, he is not liable as a member of the Company unless and until notice has been posted or otherwise communicated to him that his application has been in whole or in part accepted. The notice need not be in writing; but the party, whether applicant or Company, wishing to enforce the contract must prove that there was a binding agreement to take shares. The mere entry of the applicant's name in the register of shareholders is not sufficient; but where there are other circumstances pointing to the fact that the person must have known that his application was accepted, he will be held liable.³ If a person merely expresses his readiness to take shares, and does nothing more, there is no contract which can be enforced. This may be illustrated by reference to the following case:—A person who had been chief originator and adviser in the formation of a Company, and who along with others had signed a paper agreeing to subscribe £1000 towards the capital of the Company if it were started, died the day after the Memorandum of Association was registered, and previously to the allocation of the shares. Further, he had been one of the seven signatories required for the Memorandum of Association, where his name was entered for the statutory single share; and it was decided that the deceased had incurred no liability to the Company except as a party to the Memorandum of Association by which he became bound to take one share.⁴

¹ *Henthorn v. Fraser*, 1892, 2 Ch. 27.

² *In re Brewery Assets Corporation*, *Truman's case*, 1894, 3 Ch. 272.

³ *In re International Contract Co.*, L. R. 3 Ch. 36.

⁴ *Molleson & Grigor v. Fraser's Trustees*, 1881, 8 R. 630.

Letter of Allotment sent through Post.—When a person applies for shares and these are duly allotted to him, and the letter of allotment is properly addressed and posted, the applicant becomes liable as a shareholder from the time when the letter is posted, although in point of fact the letter never reaches him, for the reason that when once posted the post office authorities become the agents of the addressee and not of the addressor.

Application for Shares with Condition attached—Power of Directors in such circumstances.—The directors of a Company have no power to place a person on the list of shareholders with qualified liability. Every person who becomes a shareholder incurs all the liabilities of the other members, and must be placed on the same footing with them.¹

To whom Shares can be allotted.—Shares can competently be allotted to the same persons as can sign the Memorandum of Association.

Stamp Duty on Letters of Allotment and Letters of Renunciation.—A stamp duty of sixpence is chargeable on every letter of allotment and letter of renunciation, or any other document having the effect of a letter of allotment, where the nominal amount which is allotted or to which the letter of renunciation relates is not less than £5.² A separate duty is chargeable in respect of letters of allotment and letters of renunciation, although they may be contained in the same document. The duty in respect of letters of renunciation may be denoted by an adhesive stamp, which is to be cancelled by the person by whom the letter of renunciation is executed.

Every person who executes, grants, issues, or delivers out any document chargeable with duty as a letter of allotment or letter of renunciation before the same is duly stamped, incurs a fine of £20.³ The fact that a letter of allotment is not stamped, or is insufficiently stamped, does not affect its validity.

¹ *Milne v. N. B. Fresh Fish Co.*, 25 S. L. R. 36.

² Finance Act, 1899, sec. 9.

³ Stamp Act, 1891, sec. 79.

Stamp Duty on Banker's Receipt for Money paid on Allotment.—It has been determined that where the intention is that the banker's receipt should be detached from the letter of allotment on receipt of the amount payable on allotment, the receipt is chargeable with a duty of one penny. Where the allotment letter and the receipt form are entire, and there is no perforation between the two, no stamp is required on the receipt.

PAYMENT OF SHARES.—The provisions under which the system of limiting liability was inaugurated were provisions not merely for the benefit of the shareholders for the time being in a Company, but were enactments intended also to provide for the interests of two other very important bodies. In the first place, those who might become shareholders in succession to the persons who were shareholders for the time being; and, secondly, the outside public, and more particularly those who might be creditors of the Company. The price of the privilege of limited liability is that the capital shall be real and not a sham. To further this end the Act of 1862 required the capital to be paid in full, and gave no power—nor has a Company yet power—to issue shares at a discount, so as to render the shareholder liable for a smaller sum than that fixed for the value of the shares by the Memorandum of Association. Ways and means were, however, found to get over this difficulty; and to counteract such abuses of the Statute, it was provided by the 25th section of the Act of 1867, that “every share in any Company shall be deemed and taken to have been issued and to be held subject to the payment of the whole amount thereof in cash, unless the same shall have been otherwise determined by a contract duly made in writing and filed with the Registrar of Joint Stock Companies at or before the issue of such shares.” This section, which gave rise to much controversy, has been repealed by the Companies Act, 1900.

Prior to the Act just referred to, if there was no agreement filed with the Registrar at or before the issue of the shares, the

shares required to be paid for in cash, and that whether or not value had been given, although not in cash, for them.¹ Now in the case of Companies limited by shares,² where shares are allotted³ in whole or in part for a consideration other than cash, the Company must, within one month after the allotment, file with the Registrar a contract in writing constituting the title of the allottee to such allotment, together with any contract of sale, or for services or other consideration in respect of which such allotment was made. The contracts must be duly stamped. Further, a return⁴ must be filed stating the number and the nominal amount of the shares so allotted, the extent to which they are to be treated as paid up, and the consideration for which they have been allotted. The duty of filing the contract is with the Company. If it is not duly filed, the position of the allottee is not thereby prejudiced, nor is he liable merely because of the omission to pay for the shares in cash. Under the Act of 1867, if no agreement was filed at or before the issue of the shares, the allottee was liable to pay cash for the shares. It was immaterial whether the omission to comply with the requirements of the Act was with the Company or with him. There was no statutory duty upon anyone—as there is now—to file the agreement; but if the person taking the shares failed to see that the agreement was registered, he was made to suffer the loss. If default is made in complying with the requirements of the Act, every director, manager, secretary, or other officer of the Company who is knowingly a party to the default, is liable to a fine not exceeding £50 for every day during which the default continues.⁵

If the person to whom shares are issued has a money claim against the Company, that money claim may be set off as cash paid against the shares; and no agreement on the subject

¹ *Custonholm Paper Mills Co. Ltd. v. Law*, 1891, 18 R. 1076.

² The provisions of the Act of 1900 in this respect do not apply to unlimited Companies or Companies limited by guarantee.

³ Act 1900, sec. 7.

⁴ As to penalty for false statement, *ibid.* sec. 28.

⁵ Act 1900, sec. 7 (2).

requires to be filed, for in such a case the shares are not allotted for "a consideration other than cash." It is not necessary, in order to satisfy the provisions of the Statute as to the payment of shares in cash, that the money claim should be paid in cash to the shareholder and handed back by him in cash as payment of shares allotted to him. The mere passing of money from hand to hand is not necessary; but there must be money due from the one to the other on both sides, and the parties must agree to set the one demand of money off against the other demand of money.

Essentials of Contract.—The Act provides that the contract must be "in writing." Like all other mutual contracts, the deed must be signed by the Company and by the person who is to receive the shares, as until it is so signed there is not that legally binding contract which the Act contemplates. In whatever manner the contract is expressed, the document must show to any person looking at it the nature of the consideration to be given by the person who is to get shares in the Company without paying for them in cash.

The Articles of Association do not constitute a contract within the requirements of the Act. Hence in a case where the Articles provided that the directors should offer for subscription certain debenture bonds, and that with each bond they should allot, by way of bonus to the lenders, fully paid-up shares of equal value to the amount of such bond, F., who was already a member of the Company, subscribed for some of the bonds, and bonus shares of equal nominal value were allotted to him and registered in his name as paid-up shares. The Company was afterwards ordered to be wound up, and it was decided that the Articles did not constitute a writing, and that F. was liable to pay in cash the nominal value of his bonus shares.¹

It must not be assumed that a person can, by a contract duly filed with the Registrar, be exonerated from giving valuable consideration for the shares allotted to him. Where shares

¹ *In re Malaga Lead Co.*, Firmstone's case, 20 Eq. 524.

are not to be paid for in cash, the Company must get in return for the shares an equivalent to cash. It does not follow that the article or other consideration given for the shares could be sold in the open market for a sum sufficient to buy the shares, but the one must have some relative bearing to the other. The decision, however, of the directors on the point will not readily be interfered with by the Court; but where it appears that the consideration given is out of all proportion to the shares allotted, and that the directors have abused their position, the Court will interfere.

PREPAYMENT OF SHARES.—If the Articles authorise it, the directors may receive from any member willing to advance the same, all or any part of the moneys due upon his shares beyond the sums actually called for. The directors themselves have the same right. Hence, in a case, three directors who had not paid or been called upon to pay anything on their shares, made themselves liable on their personal guarantee for money advanced to the Company by a bank. The Company being in difficulties, and the bank having obtained judgment against the guarantors, a resolution was passed by the board of directors, that in order to reduce the debt due to the bank, the directors be recommended to pay in advance the amount of their shares. The three directors subsequently paid a sum equal to the amount of their shares, which was placed to the credit of the Company at the bank. Two days afterwards a petition was presented, on which an order for winding up was made, and it was decided that the three directors were guilty of no breach of trust or duty to the Company in paying up their shares in order to relieve themselves of their personal liability to the bank; that the payment was a valid payment on account of the shares, and that the shares must be treated as paid-up shares.

FOUNDERS' SHARES OR DEFERRED SHARES.—This class of shares originated with private Companies. Thereafter they came occasionally to be adopted by trading Companies, being found convenient—(1) as a consideration for getting the capital

of the Company underwritten, or for other costs of promotion ; and (2) as a bonus to applicants for shares, one founder's share for say twenty ordinary shares subscribed. Such shares are now but rarely issued by Companies other than those of a speculative character. They diminish the value of the ordinary shares, as provision is usually made that the holders of such shares are to be entitled to one-half or one-third of the profits of the Company after payment of 7 or 10 per cent. to the ordinary shareholders.

In a recent case, by the regulations of a Company the shares were divided into ordinary and founders' shares. The profits from time to time available for dividend were declared to be available for payment of a dividend of 15 per cent. on the ordinary shares, and the surplus divisible between the ordinary and deferred shareholders in certain proportions. The directors of the Company, after declaring a dividend on the ordinary shares, proposed to carry the balance to a reserve fund ; but to this the deferred shareholders objected. It was decided that neither the directors nor the Company could carry any of the profits to a reserve fund, to the prejudice of the holders of founders' shares.¹

CERTIFICATES OF SHARES.—As soon as possible after the letters of allotment are posted, the share certificates are issued in exchange for the letters of allotment, and bankers' receipts for the money paid on application and allotment. In the case of a Company having a capital divided into shares, each share must be distinguished by its appropriate number.² A certificate under the common seal of the Company specifying any share or shares held by any member of a Company is *primâ facie* evidence of the title of the member to the share or shares therein referred to.³ The Articles of Association usually provide for the manner in which share certificates are to be issued to members, but it may be noted in the case of Com-

¹ *Fisher v. Black and White Publishing Co. Ltd.*, 30th Nov. 1900, 17 T. L. R. 103.

² Act 1862, sec. 22.

³ *Ibid.* sec. 31.

panies, where the regulations of Table A to the Act of 1862 are adopted, that "every member shall on payment of one shilling, or such less sum as the Company in general meeting may prescribe, be entitled to a certificate under the common seal of the Company, specifying the share or shares held by him, and the amount paid up thereon."

The certificate is in itself of no intrinsic value. It is merely the evidence of the right of the person therein named to the shares specified. Hence the mere delivery of the certificate although for value does not confer upon the person receiving it any vested interest in the shares represented by the certificate.

Lost or Destroyed Certificates.—In the Articles of Association provision is usually made for the replacing of lost or destroyed certificates upon, in some cases, payment of a small fee, or, in others, upon satisfactory proof of the loss, or, in default of proof, upon a sufficient indemnity.

Share Warrants to Bearer.—The issuing of share warrants payable to bearer, although competent, is very rarely taken advantage of by Companies having their registered office in Scotland. No doubt such warrants greatly facilitate sales, as the right represented by them passes by mere delivery of the warrant without a formal transfer, and no registration of the title of a transferee is necessary; but, on the other hand, there is an objection to them, as in the event of their being lost or stolen, and thereafter getting into the hands of a person who takes them in the ordinary course of business for value, the loser has no remedy against either the Company or the purchaser for recovery of his property. The terms upon which such warrants can be issued are regulated by the Act of 1867.¹ In that Act there is a provision, sec. 29, that the bearer of a share warrant is, subject to the regulations of the Company, entitled on surrendering such warrant for registration to have his name entered as a member in the register of members. The share-warrant must be duly stamped with the appropriate

¹ Secs. 27–36.

duty in terms of sec. 33 : "If a share warrant is issued without being duly stamped, the Company issuing the same, and also every person who at the time when it is issued is the managing director or secretary, or other principal officer of the Company, shall incur a fine of £50."¹

¹ Stamp Act, 1891, sec. 107.

CHAPTER V

REGISTER OF MEMBERS AND TRANSFER AND TRANSMISSION OF SHARES

REGISTER OF MEMBERS.¹ — Every Company incorporated under the Companies Acts is required to keep in one or more books a register of its members, and there must, under certain penalties, be entered in the register the particulars specified in sec. 25 of the Act of 1862.² As the register is *prima facie* evidence of any matters directed or authorised to be inserted therein, and are so inserted, the prescribed form of keeping the register must be strictly complied with. Again, so long as the name of a person appears on the register, he is liable as a shareholder; and in the event of any claim being preferred against him, the burden of proving that he is not liable is upon him.

The register is the only evidence by which the rights of members to vote at a general meeting can be ascertained.

Inspection of Register.—Sec. 32 of the Act of 1862² contains the regulations as to the inspection of the register of members. The register is required to be kept at the registered office of the Company, and any member is entitled to inspect it free of charge. Any other person is entitled to inspect the register on the payment of one shilling, or such less sum as the Company may prescribe for each inspection. Every member, or any person not a member, may require a copy of

¹ For definition of members, see Act of 1862, sec. 23.

² See Appendix.

the register or any part thereof from the Company, who are bound to supply it on payment of sixpence for every hundred words required to be copied. But any person inspecting the register, and paying the fee for inspection, where chargeable, is entitled to make copies without any additional charge. The fact that a person has become a member of a Company at the instance of a rival Company, and for the purpose of serving the interests of such Company, does not deprive him of the right to this statutory privilege.¹

Power of Companies to keep Colonial Registers.—Any Company whose objects comprise the transaction of business in a colony may, if authorised so to do by its regulations as originally framed, or as altered by special resolution, cause to be kept, in any colony in which it transacts business, a branch register or registers of members resident in such colony. The regulations for keeping the register and relative procedure are contained in “The Companies (Colonial Registers) Act, 1883.”²

Power to close Register.—Any Company may, upon giving notice by advertisement in some newspaper circulating in the district in which the registered office of the Company is situated, close the register of members for any time or times not exceeding in the whole thirty days in each year.

Entry of Trusts on Register.—In the case of Companies registered in England or Ireland, no notice of any trust, express, implied, or constructive, can be entered on the register.³ With Scots Companies it is otherwise. Trusts are recognised, and trustees are registered as such, but the liability of the persons so registered in Scotland is the same as if they had been registered in their individual capacity; were it otherwise the trustees would be registered with qualified liability, which is foreign to the spirit of the Companies Acts. The reason for permitting trustees to be registered as such is to identify the shares as belonging to the trust, and safeguard the interests of beneficiaries.

¹ *Mutter v. Eastern and Midlands Railway Co.*, 1888, 38 Ch. D. 92.

² See Appendix.

³ Act 1862, sec. 30. See Appendix.

With regard to the position of persons acting in a representative capacity, such as a trustee in bankruptcy, judicial factor, or the like, such persons incur the same personal liability as a trustee under a testamentary settlement if they go upon the register of shareholders. It is not, however, necessary for them to do so, the noting of their title being sufficient to enable them to sell the shares or draw the dividends.

RECTIFICATION OF REGISTER.—*Remedy for improper Entry or Omission of Entry in Register.*—If the name of any person is, without sufficient cause, entered in or omitted from the register of members of any Company, or if default is made, or unnecessary delay takes place in entering on the register the fact of any person having ceased to be a member of the Company, the person or member aggrieved, or any member of the Company, or the Company itself, may in a summary manner take proceedings to have the register rectified.¹ Such proceedings in Scotland must be in the Court of Session. It is a matter of discretion whether the Court will exercise in any particular case the summary jurisdiction conferred in the section of the Act just referred to, and no precise line can be drawn between the cases that are suitable for disposal in a summary form and those which are more appropriate for trial by action of declarator or reduction. The hypothesis of the section under discussion is that when a mistake has been made in entering the name of someone on the register, or in omitting to make the necessary entry, it can be corrected upon the facts being brought under the notice of the Court. When the right of the party claiming to be put on the register, or to be taken off, depends on written documents,—it may be on a contract to take shares, or a contract to transfer shares, or upon the question whether the directors have the power to decline to accept a transferee, or any other consideration which admits of instant verification from documents,—it is the practice of the Court to dispose of such questions under an application founded on the section referred to. Cases have been

¹ Act 1862, sec. 35.

disposed of under the section where the facts alleged were that the petitioner had been induced to take shares by material misrepresentations on the part of those acting for the Company, made in the knowledge that they were untrue.¹ One case was disposed of where a person sought to have his name deleted from the register on the ground that certain of the shares of which he was registered as proprietor had been issued to him at a discount.² But the jurisdiction is not meant to be substituted for the ordinary jurisdiction of the Court, where the matters in controversy depend upon fact, and raise questions extrinsic to the proper object of the petition—the rectification of the register. Hence in a case where a petition was presented under this section by certain shareholders in a Company craving the Court to order that the register of the Company should be rectified by deleting therefrom the names of certain shareholders in respect that their shares had been illegally allotted to them as promotion money, the Court, without expressing an opinion as to the competency of such an action, held that a petition under the section was a very inappropriate and inconvenient way of dealing with the questions raised, and that the proper course for the petitioners was to raise an action of reduction in ordinary form, pending the raising of which the petition was sisted.³

Where a winding-up order has been made, the Court has power to rectify the register.⁴

The order to rectify the register must be notified to the Registrar of Joint Stock Companies.⁵

Rectification of Register by Directors.—The directors have power at their own hand to rectify the register so as to correct any merely clerical mistake that may have been made.

¹ *Blakiston v. London and Scottish Banking and Discount Corporation Ltd.*, 1894, 21 R. 417.

² *Klench v. East India Co. for Mining and Exploration Ltd.*, 1888, 16 R. 271.

³ *Blaikie and Others v. Coats and Others* (The British Mexican Railway Co.), 1893, 21 R. 150.

⁴ Act 1862, sec. 98.

⁵ *Ibid.* sec. 36.

ANNUAL LIST OF MEMBERS.¹—Every Company having a capital divided into shares must under certain specified penalties make, once at least in every year, a list of all persons who, on the fourteenth day succeeding the day on which the ordinary general meeting, or if there is more than one ordinary meeting in each year, the first of such ordinary general meetings, is held, are members of the Company. Such list must state the names, addresses, and occupations of all the members therein mentioned, and the number of shares held by each of them, and must contain a summary giving certain specified details. The summary must be framed so as to distinguish between the shares issued for cash and the shares issued otherwise than for cash or only partly for cash, and must further specify the particulars required by sec. 19 of the Act of 1900. The list and summary are to be contained in a separate part of the register, and be completed within seven days after the fourteenth day above mentioned. A copy² requires to be forwarded to the Registrar of Joint Stock Companies, signed by the manager or by the secretary of the Company; and this can be examined at his office by anyone on payment of 1s. The return is required to be made on an authorised form, and stamped with a registration fee stamp of 5s. In Scotland the forms can be obtained from Messrs. J. Oswald & Son, H.M. Register House, Edinburgh, or at the Post Office, Parliament Square, Edinburgh.

Power of Registrar to strike Name of Company off Register.—Besides the penalties which are incurred by a failure to comply with the statutory provisions as to the filing of the annual return, the Registrar has, under certain circumstances, power to strike the name of a Company off the register. The procedure necessary for this purpose, and the circumstances in which the course is justifiable, are specified in sec. 7 of the Act of 1880, and sec. 26 of the Act of 1900.³

¹ Act 1862, secs. 26 and 27, as extended by Act 1900, sec. 19.

² As to penalty for false statement, Act 1900, sec. 28.

³ For which see Appendix.

TRANSFER OF SHARES.—*Power to Transfer.*—Every shareholder has the right to transfer his shares to whom and in any competent manner he pleases, provided he has not undertaken to hold the shares for a specified period, or unless the directors, in the exercise of a power to that effect, as after explained, refuse to register a transfer. So long as a Company is a going concern a transfer will be upheld if it is an out-and-out assignment to the transferee, although the transferee is a mere pauper and the transfer made for the avowed purpose of relieving the transferor from any future liability. A director shareholder has the same power to transfer as any ordinary shareholder, and that although the shares transferred are his qualification shares. As to the effect of such a sale, see “Qualification of Director.”

The fact that a transferor knows the Company is on the eve of liquidation does not prejudice his right to transfer.

What necessary to complete right of Purchaser.—When shares are sold, to complete the right of a purchaser there must be a duly executed transfer by the seller in favour of the purchaser, signed by or on behalf of the parties, stamped with the appropriate duty, delivery of the share certificate, and the registration of the transfer. The importance of the delivery of the certificate is obvious. So long as the registered proprietor is allowed to retain the certificate he may by producing it sell the shares any number of times, and in such circumstances the purchaser who first gets the certificate and registers his transfer is in a competition preferred to the shares. In cases where the certificate is lost a purchaser should send his transfer to the Company for registration pending the issue of a new certificate.

Transfer of Shares by Persons acting under a Power of Attorney.—Where a transfer is signed by a person acting under a power of attorney from the registered proprietor of shares, or where a transfer is accepted by one person on behalf of another, the duty is upon the Company to see before registering the transfer that such person is acting within the limits of the authority conferred upon him. Nothing will be inferred which the terms of the authority do not warrant. If the deed conferring

the authority is not to be left with the Company, it should be recorded in the appropriate public register for such deeds, and an extract thereof produced, or a copy thereof, certified by a notary public, delivered to the Company.

Delivery of Certificate.—A seller of shares is bound, if the contract fixes no date, to deliver the certificates within a reasonable time.

Transfer may be registered at the request of Transferor.—To prevent undue delay in the registration of a transfer by the transferee, the Companies Act of 1867¹ provides that a Company shall, on the application of the transferor of any share or interest in the Company, enter in its register of members the name of the transferee of such share or interest in the same manner and subject to the same conditions as if the application for such entry were made by the transferee.

It is important to note that a man who executes a transfer of shares remains liable unless and until there is on the register of members a transferee who is legally liable to the Company ; and for the purpose of ascertaining whether the transferor has or has not provided such a transferee, the date of the winding up must be taken.

Obligation on Transferor.—There is an obligation upon the transferor of shares to see that he transfers to a person who has capacity to contract. Should he fail to do so, he runs the risk of having the shares thrown back upon him. The persons who cannot legally contract are lunatics, idiots, interdicted persons, pupils, and in some cases minors and married women.

Purchaser entitled to any accruing Benefit from Shares.—When once a contract of sale has been made, and in the absence of any agreement to the contrary, the purchaser of shares is entitled to any accruing benefit from the shares, such as dividends or otherwise, between the date of the contract and the registration of his transfer. The registered proprietor is bound to account to the purchaser for such benefit.

Company cannot refuse to register Transfer unless in special

¹ Sec. 26.

circumstances.—The directors of a going Company have no discretionary power, independently of power expressly given to them by the Articles of Association or deed of incorporation of the Company, to refuse to register a transfer which has been *bonâ fide* made. Where power to decline to register a transfer is conferred upon the directors, they are not bound to disclose their reasons for rejecting a transferee, provided they have fairly considered the question at a meeting of the board. But if there is evidence to show that directors have exercised their power capriciously or unfairly, the Court will interfere. Thus in one case where the directors refused to approve of transfers, not from any personal objection to the transferees, but on the ground that the transfers were colourable, and were intended to increase the voting power of the transferor, it was decided that the directors could not reject the transfers except upon personal objections to the transferees. Where the Articles give the directors a discretion to refuse to register a transfer by a shareholder if he is indebted to the Company, the time at which it is to be ascertained whether the member is so indebted or not is when the transfer is sent to the proper office of the Company for registration, and not when it subsequently comes before a board meeting for registration.

Purchaser takes the risk of Company refusing to register Transfer.—Where a contract of sale is made in accordance with the practice of the Stock Exchange, whereby the price is payable on the seller delivering a duly executed transfer, in the event of the Company refusing to register the transfer, the vendor is not bound to repay to the purchaser the price paid, as the contract for the sale of shares on the Stock Exchange does not import an undertaking by the vendor that the Company will register the transfer. The risk is with the purchaser.

Company's right of Lien over Shares.—There is a material difference between the law of Scotland and England with regard to the right of a Company to a lien over the shares belonging to a member of the Company. In Scotland at common law a Company has a lien or right of retention over

the Company's shares belonging to a shareholder in security and satisfaction of debts due by him to the Company. This right entitles the Company not only to refuse to register a transfer, but to sell the shares in satisfaction of the debt. In England no such right exists at common law, and, unless the right is conferred in the deed of incorporation, the Company cannot refuse to register a transfer on the ground alone that the member is indebted to them. In both Scotland and England a right of lien is usually conferred in the Articles, and is expressed in the following or similar terms—"a first and paramount lien and charge available at law and in equity upon every share for all debts due from the holder thereof."

There is no right of lien either in Scotland or England in respect of moneys becoming due from the shareholder to the Company after notice has been sent that there is a prior charge thereon.

Duty of Directors with regard to Transfers where Company bordering on Insolvency or Insolvent.—When the directors are satisfied that from any cause they cannot proceed with the business of the Company, and that it is expedient the same should be wound up, their duty is to pass a resolution prohibiting the further transference of shares. Again, where a circular has been issued announcing the insolvency of the Company, and calling a meeting of the shareholders to pass a winding-up resolution, the directors are not entitled to pass transfers or alter the register after the issue of the circular.

Voluntary Liquidator may sanction Transfers.—Under the Act of 1862¹ a voluntary liquidator may sanction transfers of shares made after the commencement of the winding up. This involves the power to alter the register of members; and the transferor is thereupon released from the liability which he was under at the commencement of the winding up to contribute as a present member. The transferee alone is the person placed on the "A"² list of contributories. When successive transfers are sanctioned, the ultimate transferee is the

¹ Sec. 131.

² As to "A" list, see Liquidation of Companies.

person liable to contribute as a present member, the transferor and prior transferees being liable as past members.¹

Form of Transfer.—The Companies Acts do not prescribe any particular form to be used in the transfer of shares. But where the Articles provide for a particular form of transfer, this form must be used. In the absence of such a regulation the practice of the Company with respect to its shares must be followed.

Foreign Companies.—The transfers of shares in such Companies must be carried out according to the law of the domicile of the Company.

Stamp Duty on Transfers.—The appropriate duty must be impressed on the transfer within thirty days of the first execution. The person whose office it is to enrol, register, or enter the transfer, must see that it is properly stamped. Should he fail to do so, he thereby incurs a fine of £10.²

Shares as Security.—Shares in public Companies are frequently made the subject of security in favour of bankers and others. The transfer is on the ordinary form, and the consideration is a nominal one of 5s. The transfer is sufficiently stamped with a duty of 10s. When registered the security-holder is a member of the Company to all intents and purposes, and is liable to the like extent, as if the shares had been bought by him.

Difference between Certificate and Certification.—It is material here to note the difference between the terms “certificate” and “certification.” A certificate is the evidence of a right to shares, whereas by certification is meant a marking placed upon the margin of a transfer of shares by the secretary or other officer of the Company, “certificate lodged.” A certification only amounts to a representation by the Company that a document or documents have been lodged with the Company, apparently in order, and showing, *primâ facie*, that the transferor is entitled to transfer the shares. Such certification does not import a warranty of the trans-

¹ *In re National Bank of Wales C. A.* (1897), 1 Ch. 298.

² Stamp Act 1891, sec. 15.

feror's title or of the validity of such document or documents. Hence a Company, notwithstanding a "certification," is not precluded from impugning an alleged transferee's right to the shares on the ground of the invalidity of the transfer by the transferor.¹

Transfer of Shares standing in Name of a Person deceased.

—The share or other interest of any member in a Company is personal or moveable estate, and on his death passes to the same persons and in the same proportions as his money. The transfer from the name of the deceased is accomplished in any manner provided by the regulations of the Company. In the case of Companies having their registered office in Scotland, on the death of a shareholder domiciled in Scotland the title of his executor to deal with the shares is completed by confirmation granted by the Sheriff of the county in which the deceased died domiciled. Where the shareholder dies abroad or having no fixed place of abode, confirmation is granted by the Sheriff of the County of Edinburgh. Where a shareholder dies domiciled in England or Ireland, probate is taken out by his executor in the Courts of England or Ireland, as the case may be, and on production of such probate in the Sheriff Court of the County of Edinburgh a certificate is endorsed thereon by the commissary clerk that it has been so produced. The probate has then the same force, effect, and operation in Scotland as if confirmation had been originally expedited in the Scots Courts.² Until confirmation or probate has been taken out and produced to the Company, an executor has no title to deal with the shares.

One of two trustees cannot execute a valid transfer of shares or stocks registered in their joint names. Both must act. Where more than two trustees are registered, unless the Company's Articles otherwise provide, a majority and quorum of the trustees can transfer the shares. Where there is any liability attaching to the shares, an executor may not care to

¹ *Bishop v. Balkis Consolidated Co.*, 25 Q. B. D. 77, 512.

² 21 & 22 Vict. c. 58, s. 14. See also 22 & 23 Vict. c. 30, s. 1.

incur any responsibility, and in such circumstances all that is requisite is for the executor to send the confirmation or probate to the Company, in order that his title to deal with the shares may be noted. Thereafter any transfer made by him to a purchaser or beneficiary is, notwithstanding the fact that the executor is not a member, of the same validity as if he had been a member at the time of the execution of the transfer. The noting of the confirmation or probate is sufficient to entitle the executor to draw the dividends, but the drawing of the dividends does not subject him to the liabilities of a member.

It is impossible to say how long an executor is entitled to occupy this passive position. In some Companies, with the object of compelling executors to act, there is a provision to the effect that after the lapse of a specified time the Company may sell or forfeit the shares. If in the knowledge of any liability existing on the shares the trustees divide the trust property without making provision for the due payment of the liability, they thereby render themselves personally responsible for the amount.

General instructions to a law agent given by an executor to make up a title to the executry estate do not entitle him to put the executor's name on the books of a Company as a partner in place of the testator. Where the names of trustees are entered on the register on the instructions of the agent in the trust, this creates a certain presumption against the trustees subsequently denying his authority to do so. But a presumption of this kind is not a very strong one, and may be rebutted.

Where the executors have given instructions to have their names put upon the register, they can at any moment have such instructions recalled if they have not been acted upon before the commencement of the liquidation or before the declared insolvency of the Company.

Where trustees are entered upon the register, they, with the exception of the last trustee, cease by resignation of their

office intimated to the Company, or by death without intimation, to be shareholders.

Transmission of Shares on Death of registered sole or last surviving Trustee.—When the last surviving or sole trustee, who was as such registered as the holder of shares, died, considerable trouble and expense were occasioned prior to 8th August 1900 in dealing subsequently with the shares. By the Executors (Scotland) Act, 1900,¹ which came into force on the date just mentioned, it is provided that when any sole or last surviving trustee or executor nominate has died with any funds—a term as used in the Act, sufficiently wide to cover shares in Companies—in Scotland standing or invested in his name as trustee or executor, confirmation by his executors nominate (if any) to the proper personal estate of such trustee or executor nominate, or the probate granted in England or Ireland to his executors and produced and certified by the commissary clerk of Edinburgh, shall, whether granted before or after 8th August 1900, be valid and available to such executors for recovering such funds and for assigning and transferring the same to such person or persons as may be legally authorised to continue the administration thereof; or where no other act of administration remains to be performed, directly to the beneficiaries entitled thereto, or to any person or persons whom the beneficiaries may appoint to receive and discharge, realise and distribute the same, provided that a note of such funds shall have been appended to any inventory or additional inventory of the personal estate of such deceased trustee or executor nominate given up by his executors nominate in Scotland, and duly confirmed. This privilege while permissible is not obligatory, and hence it is not incumbent upon the executors of a deceased trustee or executor nominate to make up a title to the funds, nor does it prejudice or exclude the right of any other person to complete a title to such funds, by any proceedings otherwise competent.

It is to be observed that the statutory privileges are only

¹ Secs. 6 and 7.

available to the executor nominate of a trustee or executor who was himself nominate. In other cases where any confirmation has become inoperative by the death or incapacity of all the executors in whose favour it has been granted, no title to intromit with the estate confirmed therein shall, otherwise than in the circumstances and to the extent above specified, transmit to the representatives of any such executors, whatever may be the extent of their beneficial interest therein. It is now competent to grant confirmation *ad non executam* to any estate contained in the original confirmation which may remain unuplifted or untransferred to the persons entitled thereto, and such confirmation *ad non executam* is granted to the same persons and according to the same rules as confirmation *ad omnia* is at present granted. When granted, such confirmation is a sufficient title to continue and complete the administration of the estate contained therein, but nothing so done is held to affect the rights and preferences at present conferred by confirmation on executors' creditors.

Forged Transfers of Shares or Stock.—Where the signature of the registered proprietor of shares or stock is forged to a transfer and the transfer is thereafter registered, the registration of such transfer does not confer on the transferee any right to the shares or stock referred to in the transfer. On the contrary, the proprietor whose signature has been forged can compel the Company to recognise him as the owner of the shares or stock, and entitled to all the benefits arising from ownership. Further, he is entitled to have the alleged transfer and registration cancelled.

When a Company registers a forged transfer and issues a fresh certificate to the transferee, this amounts to a statement by the Company that the person therein named is the owner of the shares, and entitled to sell them. Hence the Company is precluded in a question with a purchaser for value from the holder of the certificate from denying the truth of the statement. In such circumstances the purchaser is entitled to recover from the Company as damages for the loss of the

shares the value thereof at the time the Company first refused to recognise him as a shareholder, with interest from that time till the date of settlement.

Effect of Notice intimating Transfer.—Although a Company can prove that they sent to the alleged transferor the usual notice intimating the lodgment of the transfer, and stating that if no reply was received the transfer would be registered, the omission to then repudiate the transfer on the part of the shareholder does not preclude him from subsequently setting up the forgery.

Compensation in respect of Forged Transfers.—By the Forged Transfers Act, 1891, as amended by the Forged Transfers Act, 1892,¹ power is given to Companies or local authorities to make compensation by a cash payment out of their funds for any loss arising from a transfer of any shares, stocks, or securities in pursuance of a forged transfer, or of a transfer under a forged power of attorney, and that whether such loss arises, and whether the transfer or power of attorney was forged before or after the 27th June 1892, and whether the person receiving such compensation, or any person through whom he claims, has or has not paid any fee, or otherwise contributed to any fund out of which the compensation is paid.

In the Acts special provisions are made for the manner in which the compensation is to be provided.

Blank Transfers of Shares.—The phrase denotes a transfer of shares in a Company executed by the transferor, but blank in the name of the transferee, and usually blank also as to the date and the sum paid as consideration for the transfer. Such transfers are in use—(1) as a means of transferring the property in shares, particularly in those cases where the Company has issued share certificates with transfers printed on the back; and (2) as a means of constituting a security over shares for loans by depositing with the lender the transfer signed, together with the share certificate. In England it has

¹ These Acts will be found in the Appendix.

been decided that when blank transfers and certificates are deposited in security, the holder thereby gets a security which will be available to him on the bankruptcy of the transferor, whether his title at the date of the bankruptcy be legal or merely equitable. No decision has been given on the point in Scotland, but it is thought that a like decision would not be pronounced, for the reason that a blank transfer might be held to be null as an obligation under the Act 1696, cap. 25, "anent blank bonds and trust." This Act strikes at instruments delivered blank in the name of the grantee, and its operation is not confined to bonds, but extends to other deeds.

It is no part of the duty of a Company to inquire whether a transfer which is presented for registration was delivered complete by the transferor or otherwise. If it is, when presented for registration, *ex facie* in order, it should be registered. When the Company receives intimation from some other person that he claims an interest in the shares specified in the transfer, and asks the Company not to register it, the true position of the Company is to say, "Unless you follow up your intimation by an application for interdict or some other legal measure, we will register the transfer."¹

¹ *Shaw v. Caledonian Railway Co.*, 1890, 17 R. 466.

CHAPTER VI

OFFICIALS OF A COMPANY

DIRECTORS.—The directors are persons selected to manage the affairs of a Company for the benefit of the shareholders. The office is one of trust, which if they undertake, it is their duty to perform fully and entirely. They are, however, not trustees in the sense of those words as used with reference to an instrument of trust, such as a marriage contract or a trust disposition and settlement. One obvious distinction is that the property of the Company is not legally vested in them. A trustee is a person who is the owner of the property, and deals with it as principal, as owner, and as master, subject only to an obligation to account to some person to whom he stands in the relation of trustee. The office of director, on the other hand, is that of a paid servant of the Company. A director never enters into a contract for himself, but he enters into contracts for his principal, that is, for the Company of which he is a director and for which he is acting. He cannot sue on such contracts nor be sued on them, unless he exceeds his authority. Another, and perhaps still broader difference, is that directors are the managing agents of a trading association, and such control as they have over its property, and such powers as by the constitution of the Company are vested in them, are confided to them for purposes widely different from those which exist in the case of an ordinary trust. Perhaps the nearest analogy to their position is that of the managing agent of a mercantile house, to whom the control

of its property and very large powers for the management of its business are confided; but there is no analogy which is absolutely perfect. Their position is peculiar because of the very great extent of their powers and the absence of control, except the action of the shareholders of the Company.

Court will not readily interfere to remove Directors.—In view of the responsibility attaching to the office of director, and the fact that the election is by the shareholders, the Court will not readily interfere with the choice of a majority of the shareholders, nor will the Court compel the Company to take anyone as managing director, although he is qualified to act, if they do not desire him to act as such. Again, the Court will not interfere and order effect to be given to an agreement by which one Company is to have the right of imposing directors on the shareholders of another Company.

Unless specially prohibited in the Articles of Association, there is nothing to prevent a director of a Company becoming director of a rival Company.

APPOINTMENT AND QUALIFICATION OF DIRECTORS. — *Restriction on Appointment or Advertisement of Directors.*—In the Companies Act of 1900¹ important changes have been made with regard to the appointment and qualification of directors. That Act provides that no person shall be capable of being appointed director (and this expression includes any person occupying the position of director by whatever name called²) of a Company by the Articles of Association, or named as a director or proposed director of a Company in any prospectus issued by or on behalf of the Company, unless before the registration of the Articles or the publication of the prospectus, as the case may be, he has by himself or by his agent authorised in writing³—(1) signed and filed with the Registrar⁴ a consent in writing to act as such director, and (2) either signed the Memorandum of Association for a number of shares not less

¹ For which see Appendix, and sec. 2 of Act.

² Act 1900, sec. 30.

³ As to penalty for false statement, Act 1900, sec. 28.

⁴ Act 1862, sec. 174.

than his qualification (if any), or signed and filed with the Registrar a contract in writing to take from the Company and pay for his qualification shares (if any). There is no obligation upon a Company to make a share qualification necessary to the holding of the office of director.

On the application for registration of the Memorandum and Articles of Association of a Company, the applicant must deliver to the Registrar a list of the persons who have consented to be directors; and if this list contains the name of any person who has not so consented, the applicant¹ is liable to a fine not exceeding £50.

The above provisions do not apply to a Company registered before the 1st January 1901, or to a Company which does not issue any invitation to the public to subscribe for its shares, or to a prospectus issued by or on behalf of a Company after the expiration of one year from the date at which the Company is entitled to commence business.²

Register of Directors to be kept and sent to the Registrar.—Every Company incorporated under the Companies Acts must keep at its registered office a register containing the names and addresses and the occupations of its directors or managers, and must send to the Registrar a copy of³ such register, and must from time to time notify to the Registrar any change that takes place in such directors or managers.⁴ Penalties are provided for failure to comply with these requirements.⁵

Without prejudice to the above statutory restrictions, it is the duty of every director who is by the regulations of the Company required to hold a specified share qualification, and

¹ The Act contains no definition of the word "applicant," and it may therefore mean either the person actually making the application, or the person in whose name and for whose behoof the application is made.

² Act 1900, sec. 6.

³ As to penalty for false statement, Act 1900, sec. 28.

⁴ Act 1862, sec. 45.

⁵ *Ibid.*, sec. 46. Note.—Secs. 45 and 46 of the Act of 1862 only apply to Companies not having a capital divided into shares. But the words "and not having a capital divided into shares" were repealed by sec. 20 of the Act of 1900. So that the above sections now apply to all Companies.

who is not already qualified, to obtain his qualification within two months after his appointment, or such shorter time as may be fixed by the regulations of the Company.

The office of director is vacated if the director does not, within two months from the date of his appointment, or within such shorter time as may be fixed by the regulations of the Company, obtain his qualification, or if after the expiration of such period or shorter time he ceases at any time to hold his qualification. A person thus vacating office is incapable of being reappointed a director until he has obtained the necessary qualification. Should an unqualified person as aforesaid act as director he is liable to pay to the Company the sum of £5 for every day during which he so acts.

Unlimited Liability of Directors.—By the Act of 1867,¹ where a Company is formed as a limited Company, the liability of the directors or managers or the managing director may, if so provided by the Memorandum of Association, be unlimited.

Qualification of Directors.—When Table A, scheduled to the Act of 1862, is not adopted, it is customary to insert in the Articles of Association a clause to the effect that to entitle a person to be elected as a director he shall be the holder in his own right of at least a certain number of the shares of the Company. Apart from other considerations, this is necessary in order to get a Stock Exchange quotation for the shares. It was said at one time that the effect of such a stipulation was that if any person acted as a director without having the qualification required, he should be held to be a shareholder to the effect of being liable to be put on the list of contributories for the debts of the Company to the extent of the qualification. It has been decided² that the clause does not apply to a director nominated³ in the Articles of Association,

¹ Secs. 4-8.

² *Liquidator of the Consolidated Copper Co. of Canada v. Peddie*, 1877, 5 R. at p. 408.

³ A director cannot now be nominated in the Articles. See Act 1900, sec. 2.

and that such directors are entitled to continue in office during the whole period for which they were nominated without qualification. As regards elected directors, where the Articles require a certain qualification, merely accepting office as a director and acting as such do not constitute an agreement to become a member of the Company, but only a contract to qualify by taking the required shares within the time specified by the Articles, or if no time is named, then within two months after appointment.¹ The lapse of the time within which the director is bound to qualify only amounts to an offer to take shares, and no agreement to take them exists until the offer has been accepted, i.e. by placing the director on the register of shareholders, by resolving to allot the shares to him, or by his acting as to show that he has assumed that his offer has been accepted, and by both parties acting on that assumption. Mere lapse of time, however, will not turn the offer into a contract, and there is no contract unless the offer is accepted either expressly or by implication before the Company goes into liquidation.² But if the clause is so framed as to make a director a shareholder immediately on the expiry of the time limit, he will be liable as such. Thus it has been decided that a director was liable as a shareholder who accepted office in a Company where the Articles provided that if a director shall fail to acquire his qualification within a month, he shall be "deemed to have agreed to take the shares from the Company, and the same shall be forthwith allotted to him." If during the time specified within which to acquire shares the person appointed a director resigns, he cannot be placed on the list of shareholders, as the obligation to hold the shares ceases on resignation, and the obligation to acquire the shares is merely ancillary to the obligation to hold them.³ It is not necessary for a director to take his qualification shares from the Company. He is at liberty to get them from whom he

¹ Act 1900, sec. 3 (1).

² *In re Issue Co.*, Hutchinson's case, 1894, 1 Ch. 226.

³ *In re R. Bolton & Co.*, 1894, 3 Ch. 356.

pleases. If, however, he accepts a present of them from the promoters or persons having contracts with the Company, he may be compelled to account for the value of the shares to the Company.

Appointment.—A Company is not bound to accept the provisions in Table A with regard to the appointment of directors. Hence it is competent for a Company in the Articles of Association to specially provide for the manner in which the directors are to be appointed, the number of directors, and the qualification (if any) necessary. As it is thus obviously impossible here to consider the whole range of probable ways by which Companies may elect to appoint their directors, consideration will be given to the appointment of directors of Companies who have adopted the provisions of Table A,¹ attention being drawn to points raised in connection with other Articles of Association which have formed the subject of a decision of the Court. In a large proportion of cases where the Table has not been adopted, it will be found that the appointment of directors is required by the Articles to be made on the same or similar lines to those contained in the Table.

First Directors.—Article 52 provides: "The number of the directors and the names of the first directors shall be determined by the subscribers to the Memorandum of Association." Before this power can be exercised the Company must first be registered. Article 53 says that "until directors are appointed the subscribers of the Memorandum shall be deemed to be directors."

If the subscribers to the Memorandum of Association all concur in the appointment of the first directors, it is not necessary that they should meet for the purpose of coming to their determination, a writing signed by them being sufficient. Where, however, the subscribers meet, the appointment is ruled by the vote of the majority. There must be present at the meeting a majority of the subscribers. There is no time fixed for the notice convening such a meeting. All the subscribers

¹ For which see Appendix.

must receive due notice. A notice of two days has been held sufficient.

While the subscribers to the Memorandum can nominate the persons who are to be the first directors, no use can be made of their names as directors in a prospectus issued by or on behalf of the Company until the conditions specified in the Act of 1900 are observed.

Subsequent Directors and Rotation of Directors.—The provisions regulating the rotation of directors and the appointment of new directors are contained in Articles 58 to 65, to which reference is made.¹ If for any reason either the first meeting or the adjourned meeting, at which the election of directors ought to take place, as required by Article 62, does not proceed validly to fill up the places of the vacating directors, then they are to continue in office. The term "casual vacancy" in Article 64 means any vacancy in the directorate occurring in any manner other than by effluxion of time, such as death, resignation, or bankruptcy, or by the removal of a director as provided for in Article 65.

The fact that a director, either as vendor or lessor or otherwise, enters into any contract or agreement with the Company, does not make him vacate his office; but he cannot vote as a director in respect of such contract or arrangement.

Directors appointed for definite Period.—A Company the directors of which are appointed for a definite period has no inherent power to remove them before the expiration of that period.

Removal of Directors.—If the Articles contain no power to remove directors before the expiration of their period of office, but authorise the shareholders by special resolution to alter any of the Articles, there must be a separate special resolution altering the Articles, so as to give power to remove directors before a resolution can be passed to remove any of them. It is incompetent to have the two resolutions running concurrently.

Vacating of Office by Director.—In the case of Companies having special Articles of Association, provision is invariably

¹ See Appendix.

made for the vacating by a director of his office on the occurrence of certain events, such as his being absent from meetings of the board for a certain specified period, his becoming bankrupt or insolvent, his holding any other office or place of profit under the Company, and on his failure to duly obtain and maintain his qualification, if any. This last condition is now statutory.¹ For Companies regulated by Table A, the conditions necessary to the vacating of office are specified in Article 57.

Resignation of Director.—Where there is no provision in the Articles entitling a director to resign office, it is doubtful whether he can competently refrain from attending to the business of the Company. A director desiring to be freed from the responsibility of his office should send notice of his resignation to all the members of the Company.

Effect to be given to Actings of Persons who have been improperly appointed Directors.—To prevent hardships which would undoubtedly arise if the actings of persons appointed directors were to be subsequently set aside, on the ground that for some reason or other their election was invalid, the Act of 1862² provides that “all appointments of directors, managers, or liquidators shall be deemed to be valid, and all acts done by such directors, managers, or liquidators shall be valid, notwithstanding any defect that may afterwards be discovered in their appointments or qualifications.” This, however, only applies to acts done before the invalidity of their appointment is shown. When, however, their appointment has been shown to be invalid, their subsequent acts are not valid. Again, when the Articles of Association provide that “the business of the Company shall be conducted by not less than” a specified number of directors, the words are imperative, and not merely directory; consequently, a call made, or a forfeiture of shares declared, by less than the specified number of directors is invalid. But if there is a clause providing that continuing directors may act notwithstanding a vacancy in the board,

¹ See Act 1900, sec. 3.

² Sec. 67.

this will validate acts done when the board has fallen below the minimum.¹

The section in question is not confined in its application to dealings by the directors with the public, but applies equally to their dealings with the shareholders.

Sale by Director to Company.—The mere fact that a person is a director of a Company does not preclude him from selling his property to the Company, nor from making the best bargain he can. He is entitled to say, "I have an article to dispose of. I am willing to sell it to you on the following terms and conditions." He may ask what price he pleases, and obtain what price he can, and he is under no obligation whatever to say what price he gave or has to give for the article in order to complete his title to it. But he is bound to disclose to the Company the fact that he is offering for sale his own property, or if it is not wholly his own, then what precisely is his interest in it. Should he not do so, the Company on ascertaining the fact may rescind the contract, or in their option hold the director to it.

Director acting for Parties dealing with Company. — A director should not act as solicitor or agent for a person in a transaction with the Company, as subsequently the Company may repudiate the contract thus made.

A Director is not entitled to receive for himself any secret Commission in respect of his Position.—A director is not entitled to receive for himself any secret commission, or any present in respect of anything he may do as a director of the Company. His position in this respect is the same as a trustee, and the law with regard to trustees has thus been stated: "Whenever it can be shown that a trustee has so managed matters as to obtain an advantage, whether in money or money's worth, to himself personally through the execution of his trust, he will not be permitted to retain it, but will be compelled to make it over to his constituents."² Directors may receive a

¹ *In re Alma Spinning Co.*, 1880, 16 Ch. D. 681.

² *Per Lord Young in Huntingdon Copper Co. v. Henderson*, 1877, 4 R. 294.

commission or present, if the receiving of it is made known to and approved of by the shareholders. What the law strikes at is the obtaining of such commission or present secretly.

Power of Directors.—The management of the business and the control of the Company is vested in the directors, who, in addition to the powers and authorities expressly conferred upon them by the Articles of Association, may exercise all such powers and do all such acts and things as may be exercised or done by the Company, and are not by the Articles or the Companies Acts expressly directed or required to be exercised or done by the Company in general meeting. They may appoint and, at their discretion, remove or suspend managers, secretaries, or other servants of the Company as they may from time to time think fit; and they may determine the duties and fix the salaries and emoluments of such persons respectively. They may frame bye-laws and regulations for the conduct and carrying on of the business of the Company.

Directors are trusted, and ought to be trusted, with the entire management of the Company, and the widest discretion is allowed to them in conducting the business within the powers conferred upon them by the deed of incorporation of the Company. The directors, in the absence of fraud or deliberate perversion, are trusted in determining for themselves what they may do and to what extent they may go in matters indirectly connected with or arising out of their business relations with others. An attempt was made in a case to restrain the directors of an Insurance Company from paying or contributing to losses which were not technically covered by the terms of the insurances; but it was answered by the Court that such liberality was a legitimate mode of preserving and increasing the customers of the Company.

Delegation of Authority by Directors.— Unless specially authorised by the Articles of Association, directors cannot delegate the powers which are vested in themselves to other persons. Special businesses require skilled assistance; and while directors may call in the assistance of outside persons to

advise them on the business of the Company, the responsibility of acting rests with the directors.

In Article 68 of Table A, provision is made for the directors delegating any of their powers to a committee of themselves consisting of such numbers as they may fix. It has been decided that if no provision is made as to the number of the committee required to form a quorum, the whole committee must act. There is nothing incompetent in the directors appointing a committee consisting of one person.¹

Payment of Debts of Company.—So long as a Company is a going concern, the directors may authorise the payment of accounts due by the Company incurred in the ordinary course of business, and that although the person entitled to the money is a debtor to the Company.

Compromising Claims.—A corporation or Company has as an incident to its existence the same power of compromising claims made against it as an individual has, and this power can be validly exercised by the directors. The compromise, however, must be of a claim against the Company. Hence the directors have no power to release a shareholder who desires to have his shares cancelled.

Proceedings in Court.—The directors have a right to use the name of the Company for proceedings in Court; and such proceedings should be commenced by authority of the directors or a resolution of the Company in general meeting. The Company in general meeting may refuse to allow the directors to use the name of the Company for certain purposes.

Provision as to Costs in Actions.—Where a Company is pursuer in any action or other legal proceeding, any judge having jurisdiction in the matter may, if it appears by any credible testimony that there is reason to believe that if the defender is successful in his defence the assets of the Company will be insufficient to pay his expenses, require sufficient security to be given for such expenses, and may stay all proceedings until such security is given.²

¹ *In re Taurine Co.*, 25 Ch. D. 118.

² Act 1862, sec. 69.

Effect of Entry in Books of Company.—Entries in the books of a Company are evidence against, although not in favour of, the Company in respect of the matters to which the entries relate.

Company may ratify ultra vires Acts of Directors, if such Acts within Powers of Company.—Where directors enter into any contract outwith the scope of their authority, the Company may by a resolution of a general meeting ratify such contract, provided the contract is within the scope of the business of the Company.

Position of Persons dealing with Directors.—Persons dealing with the directors of Joint Stock Companies are bound to make themselves acquainted with the provisions of the Companies Acts and the Articles of Association of the Company, so as to satisfy themselves that the proposed transaction is within the scope of the business for which the Company has been incorporated. Having done this, they are entitled to assume that all the forms of indoor management have been properly and competently attended to, and that all notices of meetings, and notices of resolutions to be proposed at such meetings, have been given. Consequently the shareholders cannot repudiate the actings of the directors on the ground that no notice of a resolution conferring power on the directors had been given. A case may be referred to. The directors of a Company had power under their Articles to fix the number of directors who should form a quorum. By a resolution they fixed three as a quorum. A meeting of directors at which only two were present authorised the secretary to affix the seal of the Company to a mortgage, which was accordingly done by the secretary in the presence of the same two directors. On the Company repudiating the mortgage, it was decided that as between the Company and the mortgagees, who had no notice of the irregularity, the execution of the deed was valid.¹

A different rule pertains with regard to the dealings of

¹ *County of Gloucester Bank v. Rudry Merthyr Steam, etc. Co.*, 1895, 1 Ch. 629.

directors with the Company. They are presumed to know if the regulations of the Company have been carried out. Thus in one case the directors, with the sanction of a general meeting of the Company, had an unlimited power to borrow money for the purposes of the Company, but without such sanction they could only borrow to the extent of £1000. The directors, without the necessary sanction, issued debentures to the extent of £3000, and these debentures were all taken up by the directors personally. In a question as to the validity of the debentures, the Court decided that as the directors must be held to have known that the regulations of the Company had not been complied with, the debentures were only good to the extent of £1000. Had the question been with a person not a director, and who did not know whether the regulations of the Company had been observed or not, the debentures would have been good to the full extent of the issue.

Directors must exercise their Powers fairly.—The directors of a Company must so act as best to promote the interests of the corporation whose affairs they are conducting, and not to promote their own interests to the prejudice of the Company. If it can be shown that the directors are exercising their powers unfairly, or with the object of taking an unfair advantage of the shareholders, the Court will interfere. Thus in one case the directors were restrained from fixing a particular date for holding the annual general meeting of the Company, on the ground that it was so fixed with the object of preventing shareholders from exercising their voting powers.

Personal Liability of Directors.—If directors act within their powers, if they act with such care as is reasonably to be expected from them having regard to their knowledge and experience, and if they act honestly for the benefit of the Company they represent, they discharge their legal duty to the Company, and are not personally liable for losses which the Company may suffer by reason of their mistakes or errors in judgment. Before a director can be held personally liable for his actings, he must be guilty of such negligence as would

make him liable in an action. Mere imprudence is not such negligence. Want of judgment is not. It must be such negligence as would make a man liable in point of law.¹

There is no duty incumbent on a director to test the accuracy or completeness of what he is told by the general manager of a Company. Business cannot be carried on on principles of distrust. Men in responsible positions must be trusted by those above them as well as by those below them until there is reason to distrust them. Care and prudence do not involve distrust, and a director acting in good faith himself is not legally liable for negligence in trusting the officers under him not to conceal from him what they ought to report.² But if directors place implicit trust in their manager, if, in fact, they delegate their powers to him, and do not take the trouble to see that what he does is even apparently what he ought to have done, and loss arises, they will be held liable.³

If a director makes mis-statements to his shareholders—and it is material here to note that what a director ought to have known is as important as what he knows—he is liable for the consequences, unless he can show that he made them honestly believing them to be true, and took such care to ascertain the truth as was reasonable at the time.

Personal Liability of Directors on Bills of Exchange.—The liability of directors with regard to bills of exchange may thus be stated. If on the face of the bill it appears that the directors sign only for and on behalf of the Company, they are not personally liable should the bill not be met. But if they sign a bill merely describing themselves as directors, and not stating that they are acting on behalf of or on account of the Company, they will be personally liable.⁴

Personal Liability of Directors for Payment of Dividends out of Capital.—The question of the personal liability of

¹ As to personal liability of directors for improper allotment of shares, see Allotment of Shares.

² *In re The National Bank of Wales Ltd.* (C. A.), 1899, 15 T. L. R. 517.

³ *Leeds Estate Co. v. Shepherd*, 36 Ch. D. 787.

⁴ *Brown v. Sutherland*, 1875, 2 R. 615.

directors has been most frequently before the Court on the issue of the payment of dividends out of capital. The paid-up capital of a Company cannot be lawfully returned to the shareholders under the guise of dividends or otherwise. Consequently, if directors pay dividends out of capital they are jointly and severally liable to repay the whole sums so paid; and this liability exists although the shareholders are made aware of the true facts. While, no doubt, the ratification by the shareholders of the misapplication of the money of the Company by the directors would bind them individually, they cannot bind the Company, because the payment of dividends out of capital is *ultra vires* the Company, and incapable of ratification by the shareholders. The fact that the capital thus improperly applied is distributed *pro rata* among the whole body of shareholders, does not protect the directors; the reason being that the shareholders are not the corporation, and that payment to them would not prevent the corporation before winding up, or the liquidator after winding up, from compelling the directors to replace the money in order that it might be applied to proper purposes.¹

The persons liable to refund the money so erroneously paid are those who were directors when the payment was made.

In the event of a Company being wound up, the Act of 1862² makes special provision for the personal liability of past and present directors of the Company to repay any money misapplied or retained in their own hands.

Money paid out of Capital by Directors to Shareholders may in certain circumstances be recovered from Shareholders.—Where directors of a Company distribute a portion of the capital, without the sanction of the Court, amongst the shareholders with their assent, and with notice of the fact that the money so distributed is part of the capital, if the directors are subsequently called upon to replace the money, and do so on the ground that the payment to the shareholders

¹ *In re Exchange Banking Co.*, Flitcroft's case, 21 Ch. D. 519.

² Sec. 165.

was *ultra vires*, they are entitled to recover from the shareholders the amount received by them. The following case illustrates this. A Company owned a ship which was lost. The ship was insured, and the underwriters paid a sum of money in respect of the insurance, which sum was part of the capital of the Company. Instead of putting the money in the coffers of the Company as capital, it was agreed by all who were interested to divide it among the shareholders in proportion to the number of shares held by them. This was done, with notice to the shareholders that they were receiving part of the capital of the Company. Afterwards the Company got into difficulties, and was wound up. The liquidator sued the directors who had received and distributed the money for recovery thereof. He succeeded in his action, and thereafter the directors sued the shareholders for the amount they had received. The Court held that the directors were entitled to succeed in their action.¹

Liability of one Director for Fraud of another.—Fraud is a personal matter, and can only be committed by an individual. It is true that others may become liable for the fraud of an individual, but that does not affect the essentially personal nature of the act giving rise to the liability. Hence one director is not responsible for the fraud of another director unless it can be proved that he has either authorised or adopted the acts. The presence of a director at a meeting at which the minutes of a previous meeting, which authorised a fraudulent act to be committed, are confirmed, is, subject to the qualification immediately to be stated, sufficient to make him liable as if he had consented to the act. The mere protesting by a director at the meeting where the minutes are confirmed is not sufficient to exonerate him if he thereafter take no active steps to prevent the fraudulent act being carried out.

A director who has had to pay money to make good a breach of trust is entitled to bring an action for contribution against his co-directors who have been parties to the breach of trust.

¹ *Moxham v. Grant*, 1900, 1 Q. B. 88.

Liability of Company for Fraud by Directors.—If directors, acting within the apparent scope of their authority, fraudulently induce another to contract with them, the Company is responsible for such fraudulent act. The principle upon which this rule of law is based, is that a master is liable for every wrong of his servant or agent committed in the course of his service and for the master's benefit; because, although the master may not have authorised the particular act, he has put the agent in his place to do that class of acts, and he must be answerable for the manner in which that agent has conducted himself in doing the business which it was the act of his master to place him in. This is a principle not of the law of torts, or of fraud, or deceit, but of the law of agency, equally applicable whether the agency is for a corporation in a matter within the scope of corporate powers, or for an individual; and the decisions of the Courts have proceeded not on the ground of any imputation of vicarious fraud to the principal, but because, with regard to the question whether a principal is answerable for the act of his agent in the course of his master's business, no sensible distinction can be drawn between the case of fraud and the case of any other wrong. This statement is subject to the qualification that the third party who seeks the remedy has been dealing in good faith with the agent in reliance upon the credentials with which he has been intrusted by the principal, and had no notice either of any limitation (material to the question) of the agent's authority or of any fraud or other wrong-doing on the agent's part at the time when the cause of action arose.

It is not necessary in order to render the Company liable that the Company should obtain any benefit through the fraud of the directors, but it is necessary that in the acts complained of the directors were acting for the Company, and not to promote their own private ends.

Remuneration of Directors.—It is not implied from the mere fact that a person is appointed a director that he is entitled to receive remuneration for any services he may as such render to

the Company. A director is a person doing business for the Company, but not on the ordinary terms. In some Companies special provision is made for the way in which the directors are to be paid; in others there is not. In the former case, the provisions of the Articles must be looked to in order to determine how the matter is to be dealt with. An authority conferred in the Articles is, so long as the Company is a going concern, sufficient to justify the directors in taking payment of the amount there fixed. If there is no special provision, any payment made to the directors is of the nature of a gratuity. Directors under those circumstances often do get money. But whenever they get it, it is in the nature of a gratuity voted. Where the directors take payment of fees to which they are not properly entitled, the Court will order them to repay the amount received.

In one case the Articles of Association provided that the remuneration of the directors "shall be an annual sum of £1000, to be paid out of the funds of the Company"; and it was decided that the remuneration was not due to the directors in their character of members, but under the contract so embodying the provisions; and that, in a winding up, the directors were entitled to rank as ordinary creditors in respect of the remuneration due to them at the commencement of the winding up.¹ Again, when the Company is a going concern, the directors are entitled to sue the Company for the amount of their stipulated remuneration. Where the Articles provide that the directors are to be paid so much per annum for their services, a person who has ceased to be a director before his fee for the year becomes payable is not entitled to receive a proportionate part of such fee.

It is not absolutely essential that the director's fee should be paid only out of profit. The remuneration fixed is for work done; and if the directors do their part, the Company is bound to implement its part. Where the remuneration is a commission of a specified percentage on the net profits, the directors

¹ *In re New British Iron Co.*, 1898, 1 Ch. 324.

are not entitled to any remuneration unless there is such profit. Where directors are paid by commission on the profits, it has been decided that they are not entitled to commission on the amount realised by the Company on the sale of its business.¹

Board Meetings.—Such meetings are usually held at the head office of the Company ; but there is nothing, apart from special regulations on the subject, to prevent the directors holding their meetings at any place convenient for them.

All the directors must receive due notice of meetings ; and should this not be done, the meeting is an improper one, and any contract entered into at it may be set aside, and that although a majority of the directors are present. There is no law providing that the notice calling the meeting should specify the business to be transacted at it.

Directors must act together as a board, and in the way provided by the regulations of the Company. Unless the regulations so provide, they cannot act by a quorum, but they may act by a majority of the whole board. Whatever authority is given by shareholders to directors is given to them as a body, and not to each of them individually. The reason of their being required to act together is that the Company may have the benefit of their collective wisdom.

Although the internal regulations provide that the business of the Company is to be transacted at a board meeting, a contract entered into by the directors with a third person, when their signatures to it have been obtained separately and at different places, may nevertheless bind the Company, as such third person has a right to assume that the directors have acted in conformity with the regulations.

Exclusion of Director from Board Meeting.—A director who is improperly and without cause excluded by his brother directors from the board, from which they claim a right to exclude him, is entitled to succeed in an action to prevent his further exclusion.

Agenda-paper.—The directors at their meeting are not

¹ *Frames v. Bultfontein Mining Co.*, 1891, 1 Ch. 140.

bound to follow the order of business set forth on the agenda-paper, but are entitled to take their business at the meeting in any order they think proper. This was decided in a case where the agenda-paper of a directors' board meeting contained as the first business the consideration of a transfer of shares sent to the secretary for registration, and then, as the next business, the consideration of the question whether a call should be made to meet the Company's liabilities. The Court held that the directors were entitled to pass a resolution for a call as their first business, so as to prevent the intending transferors from evading their liability by prior registration.¹

MANAGING DIRECTOR.—The Articles of Association of most, if not all, trading Companies provide for the appointment of a managing director, and the terms and conditions upon which the appointment is to be held. It is usual to stipulate that while holding the office the managing director shall not be subject to retirement by rotation, nor taken into account in determining the rotation of directors, but shall be subject to the same provisions as to resignation and removal as the other directors. As a director is not entitled to receive remuneration for anything he may do for the Company unless such be specially provided for, the Articles invariably make provision for the remuneration of the managing director, or confer power on the directors to fix his fee.

Acts of Managing Director binding on Company.—Persons dealing *bonâ fide* with a managing director are entitled to assume that he has all such powers as he purports to exercise, if they are powers which, according to the constitution of the Company, a managing director can have. In *Lindley on Companies*, 5th ed. p. 159,² the law is thus laid down: "Upon principle, therefore, where persons are, in fact, employed by directors to transact business for a Company, the authority

¹ *In re Cawley & Co.*, 1889, 42 Ch. D. 209.

² Quoted with approval in *Biggerstaff v. Rowatt's Wharf Ltd.*, 1896, at p. 104.

of those persons to bind a Company within the scope of their employment cannot be denied by the Company, unless (1) their employment was altogether beyond the powers of the directors, or unless (2) the persons employed have been appointed irregularly, and those who dealt with them had notice of the irregularity. Where the power to appoint an agent for a given purpose exists, irregularity in its exercise is immaterial to a person dealing with the agent *bonâ fide*, and without notice of the irregularity in his appointment."

Effect of taking Commission by Managing Director secretly.—A managing director is not entitled to receive for himself, without the knowledge and consent of the Company, any sum, whether by way of percentage or otherwise, from any person with whom he is dealing or contracting on behalf of the Company. Should he do so, the directors on learning the fact are entitled to instantly dismiss him; and the dismissal is justifiable, although the offence complained of may have taken place some time previously, and may have been an isolated act.¹ Further, the Company are entitled to recover from the managing director any sums he may have so received.

SECRETARY OF COMPANY.—The secretary is a mere servant of the Company. His position is that he is to do what he is told by those having authority over him. No person can assume that he has any authority to represent anything at all; nor can anyone assume that statements made by him are necessarily to be accepted as trustworthy without further inquiry, any more than in the case of a merchant it can be assumed that one who is only a clerk has authority to make representations to induce persons to enter into contracts. But where a secretary does anything in the exercise of his office and within the limits of the powers conferred upon him, although in the particular act he may be committing a fraud against the Company, the Company will be responsible. Two cases, illustrative of the above statement, may be contrasted. In the one case, a tramway Company employed contractors to

¹ *Boston Deep Sea Fishing and Ice Co. v. Ansell*, 1888, 39 Ch. D. 339.

execute certain works. By the contract the tramway Company had a right to retain a certain percentage of the amounts for which their engineer from time to time certified, on account of the price of the works, until after the completion of the same. The contractors applied to a bank for an advance upon the security of retention moneys under the contract. The tramway Company's secretary, in answer to inquiries by the bank, erroneously represented to them that there was a certain amount of retention money in his Company's hands, which would be payable after the completion of the works, whereas in fact it was not so. The bank thereupon advanced money to the contractors on the security of an assignment of the retention money. There was no evidence to show that the secretary had authority to make the representations which he had made. The Court decided that it was not within the scope of a secretary's authority to make such representations, and that therefore the tramway Company were not precluded from denying that there was any money due by them to the contractors. In the other case, it was the duty of the secretary to procure the execution of certificates of shares in the Company with all requisite and prescribed formalities, and to issue the same to the persons entitled to receive them. By a resolution of the directors it was provided that certificates of shares should be signed by one director, the secretary, and the accountant. The secretary having executed a deed purporting to transfer certain shares in the Company to one G., a purchaser of such shares, issued to G. a certificate stating that he had been registered as the owner of the shares. Such certificate was in the usual and authorised form, and sealed with the Company's seal; but the signature of the director appended thereto was a forgery, and the seal of the Company was, in fact, affixed thereto without the authority of the directors. G. deposited the certificate with H. as a security for advances, and subsequently executed a transfer of the shares in favour of H. Neither G. nor H. had any knowledge or reason to suspect that the certificate was otherwise than a

genuine document, or that the matters stated therein were untrue. The Company refused to register the transfer in favour of H., stating that there were no such shares standing in G.'s name in their books; but the Court held that the Company were barred by the certificate issued by their secretary from disputing the title of H. to the shares.¹

To make representations by a secretary binding upon a Company there must be evidence of express authority conferred on the secretary, or a course of business proved from which such authority can be inferred.

A secretary or other officer of a Company who knowingly joins with and assists the directors in the commission of a fraud is civilly responsible for the consequence, and it is no defence for him to say that he was a mere servant of the Company. The rule is that all persons directly concerned in the commission of a fraud are treated as principals.

The secretary has no power at his own hand to strike the name of any person off the register.

The secretary employed merely as such has no lien over the books, registers, and documents belonging to the Company for debts due to him by the Company.²

The secretary is in the same position as the directors with regard to the repayment of secret commissions received by him.³

AUDITORS.⁴—Every Company is required at each annual general meeting to appoint an auditor or auditors to hold office until the next annual general meeting. Failing such appointment the Board of Trade may, on the application of any member of a Company, appoint an auditor for the current year, and fix the remuneration to be paid to him by the Company for his services.

The first auditors may be appointed by the directors before

¹ *Shaw v. The Port Philip and Colonial Gold Mining Co. Ltd.*, 1884, 13 Q. B. D. 103.

² *Barton Hotel Co. Ltd. v. Cook*, 1899, 36 S. L. R. 928.

³ See p. 76.

⁴ See Companies Act, 1900, secs. 21-23.

the statutory meeting, and if so appointed hold office until the first annual general meeting, unless previously removed by a resolution of the shareholders in general meeting, in which case the shareholders at such meeting may appoint auditors. The directors may fill any casual vacancy in the office of auditor, but while any such vacancy continues the surviving or continuing auditor or auditors, if any, may act.

Who may be appointed Auditor.—Any person competent to act may be appointed auditor, but no director or officer of the Company can act as auditor.

Remuneration of Auditors.—The remuneration of the auditors is fixed by the Company in general meeting, but the remuneration of any auditors appointed before the statutory meeting or to fill any casual vacancy may be fixed by the directors.

Rights and Duties of Auditors.—Every auditor has a right of access at all times to the books, accounts, and vouchers of the Company, and is entitled to require from the directors and officers such information and explanation as may be necessary for the performance of the duties of his office. The auditors must sign a certificate¹ at the foot of the balance-sheet, stating whether or not all their requirements as auditors have been complied with, and must make a report to the shareholders on the accounts examined by them, and on every balance-sheet laid before the Company in general meeting during their tenure of office. In every such report the auditors are required to state whether in their opinion the balance-sheet referred to in the report is properly drawn up so as to exhibit a true and correct view of the state of the Company's affairs as shown by the books of the Company, and such report must be read before the Company in general meeting.

An auditor of a Joint Stock Company is the servant of the shareholders and not of the directors. He is not an officer of the Company in the sense that a director, manager, or liquidator is. His position is radically different in every

¹ As to penalty for false statement, Act 1900, sec. 28.

respect. He is not a permanent officer. He is elected for a limited period at a fixed fee, and he goes out of office at the end of that period.

The duty rests upon the auditor to investigate the manner in which the business of the Company has been transacted, and to report thereon to the shareholders. It is no part of his duty to prepare the balance-sheet. His duty only commences when the balance-sheet has been prepared and approved of by the directors at a board meeting. There is nothing, however, to prevent the same person who is auditor being employed by the directors to prepare a balance-sheet; but in so doing the person employed is not acting as auditor, but as a professional accountant.

The first duty of an auditor is to ascertain precisely the Acts under which the particular Company is incorporated, to make himself familiar with their provisions so far as regards audit, and to have before him a copy of the Articles of Association or deed of incorporation of the Company. It is then his duty to see that the books have been kept in the manner directed by the Company, and that the forms of accounts as submitted agree therewith. It is his duty in auditing the accounts not to confine himself to verifying the arithmetical accuracy of the balance-sheet, but to inquire into its substantial accuracy, and to ascertain that it contains the particulars specified in the Articles of Association, and is properly drawn up, so as to give a true and correct representation of the state of the affairs of the Company.

An auditor is, however, not an insurer. He does not guarantee that the books do correctly show the true position of the Company's affairs. He does not even guarantee that his balance-sheet is accurate according to the books of the Company. All that the auditor is bound to do is to exercise reasonable skill and care in the preparation of his report. Where suspicion is aroused, more care is obviously necessary; but still an auditor is not bound to exercise more than reasonable care and skill even in a case of suspicion, and he is

perfectly justified in acting on the opinion of an expert, where special knowledge is required. Auditors, although it is no part of their duty to take stock, are not entitled to rely on the manager's certificate if an ordinary careful examination of the books ought to have made them suspect the truth of it. The position of an auditor has thus been summed up: "An auditor is not bound to be a detective, or, as was said, to approach his work with suspicion, or with a foregone conclusion that there is something wrong. He is a watch-dog, not a bloodhound. He is justified in believing hired servants of the Company in whom confidence is placed by the Company. He is entitled to assume that they are honest, and to rely upon their representations, provided he takes reasonable care. If there is anything calculated to excite suspicion, he should probe it to the bottom, but in the absence of anything of that kind he is only bound to be reasonably cautious and careful."¹

In one case an auditor presented a confidential report to the directors, calling their attention to the insufficiency of the securities on which the capital of the Company was invested, and the difficulty in realising them; but in his report to the shareholders he merely stated that the value of the assets was dependent on realisation; and in the result the shareholders were deceived as to the condition of the Company, and a dividend was declared out of capital and not out of income. The Court held that the auditor had been guilty of misfeasance under sec. 10 of the Companies Winding-Up Act, 1890, and was liable to make good the dividend paid.²

Audit of Accounts of Banking Companies.—In the Companies Act of 1879,³ special provision is made for the books of banking Companies registered under the Act as limited Companies being at least once in every year examined by an auditor or auditors. It is not the duty of the auditors under this

¹ Per Lopes, L. J., in *Kingston Cotton Mill Co.*, No. 2 (1896), 2 Ch. at p. 288.

² This Act does not apply to Scotland; but it is thought that if loss directly arise through the negligence of the auditor, he would in Scotland be responsible at common law.

³ For Act see Appendix, and sec. 7 of Act for regulation as to audit.

Act to consider whether the business of the bank is prudently or imprudently conducted. It is their duty to consider and report to the shareholders whether the balance-sheet exhibits a correct view of the state of the Company's affairs, and the true financial position of the Company at the time of the audit. They must ascertain this by examining the books of the Company, and must take reasonable care to see that what they certify as to the Company's financial position is true. Except in very special cases, it is their duty to place before the shareholders the necessary information as to the true financial position of the Company, and not merely to indicate the means of acquiring it.

LAW AGENT.—One of the unavoidable evils attending the conduct of business is the employment of a law agent to advise in cases requiring legal knowledge. The law agent appointed is not an officer of the Company within the meaning of sec. 165 of the Act of 1862. In the ordinary case where a solicitor is employed to act for a Company, the directors are not bound to employ him for all their law work. They can at any time discharge him or cease to send him work. They can part company as and when they please. The remuneration of a law agent is not a salary paid to him as an officer of the Company, but the ordinary remuneration which, according to the well-established table of fees, he is entitled to demand either from a Company or a private individual who is his client. With regard, however, to professional services rendered before the formation of a Company, or in connection with its flotation, a solicitor has no legal claim against the Company, and that notwithstanding the fact that in the Articles of Association provision is made for the promotion expenses being paid by the Company. The reason for this is that the Company had no legal existence when the services were performed, and consequently could not employ anyone. The claim for such services is against the promoters, or the persons who employed the solicitor, unless the Company after incorporation adopts the actings of the promoters in the employ-

ment of the solicitor. In the event of any dispute as to the amount payable, the account should be submitted to the Auditor of the Court of Session for taxation.

Although a person may be nominated as solicitor in the Articles of Association, this of itself gives him no right of action against the Company should the directors subsequently decline to employ him.¹

Law Agent's Lien.—Like as against all other clients, a law agent has a general lien over the documents belonging to the Company which come into his hands in the course of his business. This right of lien is merely a right to keep back from his client the deeds and papers which he holds as law agent until his account for professional services is satisfied. It confers no active right on the law agent, but resolves into the inconvenience which a client may suffer from being deprived of the evidence of his right as creditor or proprietor.

No right of lien can be created by the directors or anyone else in favour of the law agent over the share register of the Company. The Act of 1862² provides that the register of shareholders is to be kept at the offices of the Company for the purposes there mentioned, and that being so, no one has power to deal with it in such a way as to interfere with these purposes. The minute book is in a similar position. Again, documents which come into the hands of the law agent after the presentation of a petition for winding up are not subject to lien; but it has been decided that documents relating to allotment of shares, which come into the hands of the law agent before the presentation of a petition for winding up, are subject to lien.³ As to preference of lien of law agent over debenture-holders, see *Brunton v. Electrical Engineering Corporation*, 1892, 1 Ch. 434.

After a winding-up order has been pronounced, the former solicitor of a Company can be compelled to produce documents belonging to the Company in his hands over which he has

¹ See p. 20.

² Sec. 32.

³ *In re Capital Fire Insurance Association*, 1883, 24 Ch. D. 408.

a lien. Such production is, however, without prejudice to the lien of the law agent.

The law agent of a liquidator has no lien over the papers belonging to the Company which come into his hands. The liquidator cannot himself acquire a right of lien over the documents, and consequently he cannot, by contract or otherwise, confer any such right on another. Again, a liquidator, apart from special contract, is not personally liable to the law agent for expenses incurred; but when money is recovered and received by the law agent, he is entitled to deduct his account therefrom. Further, law expenses, properly incurred, are payable preferably to the unsecured debts.

BANKERS OF THE COMPANY.—A banker is not an officer of the Company within the meaning of sec. 165 of the Act of 1862.¹

Liability of Bank for Name appearing on Prospectus.—Almost invariably the name of a bank appears on the prospectus of a proposed public Company as the bankers of the concern. It has not yet been decided what, if any, liability attaches to the bank under the Directors Liability Act, 1890,² for mis-statements in the prospectus. The position and possible liability of a bank, in any particular case, must necessarily depend upon the actual course taken by the bank in connection with the preparation and issue of the prospectus. The mere fact that the bank's name appears on the prospectus cannot establish liability, as whatever may be the meaning of the words "has authorised," in sec. 3 of the Act, it is plain that knowledge and consent, at least on the part of the bank, are essential elements. Nor, it is thought, would the Statute render a bank liable if the acts of the bank were limited to receiving from the Company as their agents for circulation copies of the prospectus after it had been prepared by the Company, and giving such copies out to customers or the public. What will establish liability against a bank under the Act has yet to be determined.

¹ *In re Imperial Land Co. of Marseilles*, L. R. 10 Eq. 298.

² For which see Appendix.

Bank Account.—Subject to any provision in the Articles of Association to the contrary, all operations on a Company's current account must be sanctioned by the directors, and the account can be operated on only by the person or persons authorised by the directors to do so. The usual course adopted is for the directors to pass a minute authorising one or more officials of the Company to operate on the bank account. A certified copy of this minute is sent to the bankers of the Company. Unless specially authorised, the persons operating on the account have no power to overdraw it.

Where a Company, for its own protection against the misapplication of funds, requires that cheques shall be signed by a certain number of persons, this implies that every one of those persons takes care to inform himself, or if he does not take care to inform himself, is willing to take the risk of not doing so, of the purpose for which, and the authority under which, the cheque is signed.

CHAPTER VII

EXECUTION OF DEEDS OR CONTRACTS BY COMPANY, AND SEAL OF COMPANY

CONTRACTS: HOW MADE.—The Act of 1867¹ specifies the manner in which contracts are to be made and signed by or on behalf of a Company. In the Conveyancing (Scotland) Act, 1874,² further provisions are made, and these are that any deed to which a Company is a party is validly executed in Scotland on behalf of the Company, if the same is either executed in terms of the provisions of the Companies Acts or is sealed with the common seal of the Company, and subscribed on behalf of the Company by two of the ordinary directors and the secretary. Such subscription on behalf of the Company is equally binding and effectual whether attested by witnesses or not.

Execution of Deed abroad.—Any Company may, by an instrument in writing under its common seal, empower any person, either generally or in respect of any specified matter, as its attorney to execute deeds on its behalf in any place not situate in the United Kingdom. Every deed signed by such attorney on behalf of the Company and under his seal is binding on the Company, and has the same effect as if it were under the common seal of the Company.³ As to right of Company to have official seal in foreign country, see “Seal of Company.”

Signing of Bills and Cheques.—See “Borrowing by Company.”

¹ Sec. 37.

² Sec. 56.

³ Act 1862, sec. 55.

Operations on Bank Account.—See “Bankers of Company.”

Seal of Company.—The Companies Acts require that every Company shall have a common seal, which shall be impressed upon every important document executed by or on behalf of the Company, such as share and stock certificates, debenture bonds, contracts, and the like. The statutory provisions with regard to the seal are contained in secs. 41 and 42 of the Act of 1862. There is no enactment as to how the seal is to be made, but it is usual to have it engraved upon a steel die. But a seal carved on a rubber block and used as an ordinary rubber stamp would seem to be sufficient.¹

Custody of Seal.—The Articles of Association invariably provide for the custody of the seal in the following or similar terms: “The directors shall provide for the safe custody of the Company’s seal; and the same shall never be used except by their authority previously given, and in the presence of at least one director, who shall sign every instrument to which the seal shall be affixed, and of the secretary, or (in case of his absence) of some other person to be at a board meeting specially appointed by the directors to act in his place, who shall also sign or countersign every such instrument.”

Company may have official Seal to be used in Foreign Countries.—Any Company whose objects require or comprise the transaction of business in foreign countries may cause to be prepared an official seal for, and to be used in, any place, district, or territory situate out of the United Kingdom in which the business of the Company is carried on. Every such official seal must be a facsimile of, or as nearly as practicable a facsimile of, the common seal of the Company, with the exception that on the face thereof shall be inscribed the name of each and every place, district, or territory in and for which it is to be used. The statutory provisions with regard to this seal are contained in the Companies Seals Act, 1864.²

¹ *Reg. v. St. Paul's, Covent Garden*, 7 Q. B. 555.

² For which see Appendix.

CHAPTER VIII

MEETINGS OF COMPANY AND RESOLUTIONS

FIRST STATUTORY MEETING.¹ — Every Company limited by shares, and registered after the 1st January 1901, must, within a period of not less than one month nor more than three months from the date at which the Company is entitled to commence business,² hold a general meeting of the Company, which is to be called the statutory meeting. The directors must, at least seven days before the day on which the meeting is held, forward to every member a report³ certified by not less than two directors of the Company, or where there are less than two directors, by the sole director and manager, setting forth the particulars specified in sec. 12, sub-sec. 2 of the Act of 1900.⁴ The report must, so far as it relates to the shares allotted by the Company, and to the cash received in respect of such shares, and to the receipts and payments of the Company on capital account, be certified as correct by the auditors, if any, of the Company. The directors must cause a copy of the report,⁵ certified as above, to be filed with the Registrar⁵ forthwith after the sending thereof to the members of the Company.

List of Members to be produced at Meeting, and Power of Members at Meeting.—The directors must cause a list showing

¹ Act 1900, sec. 12.

² For Companies inviting applications from the public for shares, see Act 1900, sec. 6. As regards other Companies, the date of commencing business would seem to be the date of incorporation.

³ As to penalty for false statement, Act 1900, sec. 28.

⁴ For which see Appendix.

⁵ Act 1862, sec. 174.

the names, descriptions, and addresses of the members of the Company, and the number of shares held by them respectively, to be produced at the commencement of the meeting, and to remain open and accessible to any member during the continuance thereof. The members present are at liberty to discuss any matter relating to the formation of the Company, or arising out of the report, whether previous notice has been given or not; but no resolution of which notice has not been given in accordance with the Articles may be passed.

Adjournment of Meeting.—The meeting may adjourn from time to time; and at any such adjourned meeting any resolution of which notice has been given in accordance with the Articles, either before or subsequently to the former meeting, may be passed. The adjourned meeting has the same powers as the original meeting.

Effect of failure to comply with above Provisions.—If default is made in filing the report above referred to, or in holding the statutory meeting, then, at the expiration of fourteen days after the last day on which the meeting ought to have been held, any shareholder may petition the Court (in Scotland, the Court of Session) for the winding up of the Company; and upon the hearing of the petition, the Court may either direct that the Company be wound up, or give directions for the report being filed or a meeting being held, or make such other order as may be just, and may order that the costs of the petition be paid by the persons who in the opinion of the Court are responsible for the default.

Subsequent Meetings.—The Articles of Association of most Companies provide for the general meetings of the Company, and effect is given to such regulations;¹ but a general meeting of every Company must be held once at least in every calendar year, *i.e.* between the 1st day of January and 31st day of December, both days inclusive.² While this is all that the law compels a Company to do, the directors may in their

¹ See Table A to Act of 1862, arts. 29 *et seq.*

² Companies Act, 1862, sec. 49.

discretion convene an extraordinary general meeting of the Company whenever they see fit.

*Power of Shareholders to compel Extraordinary General Meeting of Shareholders to be convened.*¹—Notwithstanding anything in the regulations of a Company, the directors must, on the requisition of the holders of not less than one-tenth of the issued capital upon which all calls or other sums then due have been paid, forthwith proceed to convene an extraordinary general meeting of the Company.

The requisition must state the objects of the meeting, and must be signed by the requisitionists and deposited at the office² of the Company, and may consist of several documents in like form, each signed by one or more requisitionists.

If the directors do not proceed to cause a meeting to be held within twenty-one days from the date of the requisition being so deposited, the requisitionists, or a majority of them in value, may themselves convene the meeting; but any meeting so convened shall not be held after three months from the date of such deposit.

If at any such meeting a resolution requiring confirmation at another meeting is passed, the directors shall forthwith convene a further extraordinary general meeting for the purpose of considering the resolution, and, if thought fit, of confirming it as a special resolution. If the directors do not convene the meeting within seven days from the date of the passing of the first resolution, the requisitionists, or a majority of them in value, may themselves convene the meeting.

Any meeting convened in virtue of the powers above specified by the requisitionists must be convened in the same manner, as nearly as possible, as that in which meetings are to be convened by directors.

Summoning of Meetings.—In default of any regulation—

¹ Act 1900, sec. 13. This section seems only applicable to Companies having a share capital.

² i.e. registered office, Act 1862, sec. 39.

and this applies to cases where the regulations have become unworkable, as well as to cases where there are no regulations—for the convening of general meetings, a meeting is held to be duly summoned of which seven days' (that is, seven clear days, exclusive of the day of giving the notice and the day of the meeting) notice in writing has been served on every member, in the manner in which notices are required to be served by Table A.¹ It has been decided that notice need only be sent to shareholders who can be reached by ordinary British post, and that the notice is properly given if sent by prepaid letter to the shareholder at his address as last registered in the books of the Company. Notice convening meetings does not require to be sent to the unregistered legal representatives of a deceased member. If the Articles provide that notice of the meeting may be given by advertisement,² it is sufficient if the advertisement appear seven clear days before the date fixed for the meeting, unless the Articles require a longer notice. In the absence of any stipulation to the contrary, no notice is required to be given of an adjourned meeting.

In summoning a meeting no special form of words is necessary. It is sufficient if there is conveyed to the intended recipient of the letter the fact that at a certain place on a specified day and hour a meeting of the Company will be held. When special business is to be transacted at the meeting, requiring probably deliberation on the part of the shareholders, notice in general terms of such business must be given. It will not do when calling an extraordinary meeting merely to state "special business" without specifying what is that business, nor as a notice of a confirmatory meeting, to send a newspaper containing a marked report of the first meeting. A notice is not sufficient which states that a meeting will be held on a certain contingency, *e.g.* if a certain resolution is passed by the first meeting.

Besides an irregularity in a material point in what is stated

¹ For which see Appendix.

² *Sneath v. Valley Gold Co.* (1893), 1 Ch. 477.

in the notice, the meeting may in other respects be incompetent, and the proceedings thereat invalid. If the meeting is an irregular one, not properly convened by the board, or convened by a board not duly constituted, every resolution passed at the meeting is invalid, and will not bind the Company. But the Court will not interfere in cases where a mere irregularity has been committed in the calling of a meeting, if it is within the power of the persons who have made the mistake at once to correct it by calling a fresh meeting, dealing with the matter with all due formalities. Again, in a recent case where, upon a requisition to the directors to summon an extraordinary meeting of the shareholders to consider certain resolutions, the secretary of the Company, without consulting the directors, sent out notices summoning the meeting, which the directors subsequently ratified, the Court held that the notices so sent out were valid.¹

Constitution of Meeting.—In order to the constitution of a valid meeting a quorum of members must be present, that is, of members entitled to take part in the business of the meeting by voting. It is not enough to render the proceedings valid that the requisite quorum is present at the beginning of the meeting, but there must be a quorum while the business is being transacted. One shareholder is not sufficient to constitute a meeting. What constitutes a quorum depends on the regulations of the Company. It may, for instance, be the presence of at least three members, holding or representing by proxy in the aggregate at least one-tenth of the shares of the capital of the Company, or simply by numbers, as in Table A.²

Appointment of Chairman.—The regulations of a Company usually make provision for the appointment of a chairman; but when the regulations are silent on the subject, or when it is impossible to comply with the regulations, the shareholders present at the meeting may elect a chairman.³

Duty of Chairman.—It is the duty of a chairman to

¹ *Hooper v. Kerr, Stuart & Co. Ltd.*, 1900, 17 T. L. R. 162.

² Table A, art. 37.

³ Act 1862, sec. 52.

preserve order, conduct the proceedings regularly, and take care that the sense of the meeting is properly ascertained with regard to any question before it; but he has no power to stop or adjourn a meeting at his own will. If he purports to do so, it is competent for the meeting to resolve to go on with the business for which it has been convened, and to appoint another chairman for that object.¹

Power of Chairman.—The chairman of a general meeting has *prima facie* authority to decide all incidental questions which arise at such meeting and necessarily require decision at the time. The entry by him in the minute book of the result of a poll, or his decision of all such questions, although not conclusive, is *prima facie* evidence of that result, or of the correctness of that decision, and the *onus* of displacing that evidence is thrown on those who impeach the entry.

The vote of the majority at a general meeting, as it binds both dissentient and absent shareholders, must be a vote given with the utmost fairness. Not only must the matter be fairly put before the meeting, but the meeting itself must be conducted in the fairest possible manner.

Chairman or Directors not bound to answer Questions—Remedy of Shareholders.—The chairman is not bound after having submitted the report of the directors to answer any questions the shareholders may put. The directors have a similar privilege. In such circumstances the only course open to the shareholders present is to move the rejection of the report; but although successful in this, the result is of no practical benefit, for the reason that it is unnecessary for the report of the directors to be accepted by the shareholders. The proper course for the dissatisfied shareholders to adopt is either—(1) to have the affairs of the Company examined by inspectors appointed by the Board of Trade, on complying with the provisions of secs. 56–59 of the Act of 1862; or (2) to pass a special resolution appointing inspectors in terms of sec. 60 of the same Act.

¹ *National Dwellings Society v. Sykes*, 1894, 3 Ch. 159.

Motions at Meeting.—The regulations of a Company usually provide¹ that notices of motions must be given within a certain specified time before the meeting, and to this effect must be given. It is the duty of the chairman to decline to put a motion to the meeting which has not been properly or timely submitted, but no notice of an amendment is required, and although the notice of motion must be in writing, an amendment may be moved orally. If the chairman decline to put a competent amendment before the meeting, the motion if carried can be invalidated.

Votes of Members.—In the absence of any provision to the contrary in the Articles, every member of a Company has but one vote. But where the Articles provide otherwise, effect must be given to such regulations.² The Companies Acts do not provide how votes are to be given or counted when no poll is demanded, but it has been decided that the voting in such a case is to take place by the recognised mode, *i.e.* by counting the persons present who are entitled to vote and who choose to do so by holding up their hands. Absent members who have appointed proxies vote by these proxies; but unless a poll is demanded the person present is only counted once, however numerous may be the persons whom he represents, and this notwithstanding the fact that the regulations of the Company allow voting by proxy.³ The mere fact that a person is authorised by proxy to attend a meeting does not entitle him to demand a poll.

If the Articles provide that no shareholder is entitled to vote while any call or other sum remains due and payable in respect of his shares, in the event of the shares being forfeited for non-payment of calls, the purchasers of these shares from the Company cannot vote in respect of them while the calls remain unpaid.⁴

¹ See Table A, art. 35.

² For Companies governed by Table A, see art. 44.

³ *Ernest v. Loma Gold Mines Ltd.*, 1897, 1 Ch. 1.

⁴ *Randt Gold Mining Co. Ltd. v. Wainwright*, 1900, 17 T. L. R. 29.

Procedure when Poll is demanded.—Such procedure must be in accordance with the regulations of the Company.¹ Unless otherwise provided, it is the duty of the chairman to determine whether a poll has been properly demanded, and how the members are to record their votes. In Companies regulated by Table A, a poll may be demanded by five members. Although it is usual to adjourn the meeting and take the poll on a future day, there is nothing incompetent in the chairman, unless the Articles otherwise provide, directing the poll to be taken then and there. If the meeting is adjourned, notice of the date of the adjourned meeting should be sent to all the shareholders.

Votes by Proxy.—There is no common-law right on the part of a member of a corporation to vote by proxy. The right of a shareholder to vote by proxy depends on the contract between him and his co-shareholders ; and where parties have a right depending on the contract between them and the other parties, then all the requisitions of the contract as to the exercise of that right must be followed.

Requisites of Proxy.—Where the regulations of a Company allow voting by proxy, the regulations with regard to the form of the proxy must be strictly adhered to, otherwise the votes given thereunder will be rejected. Thus in one case the Articles provided that the appointer's signature should be attested by one or more witness or witnesses. This was not done, and it was held that attestation was essential to the validity of the proxy.²

A proxy paper signed by a shareholder leaving the name of the proxy in blank may be filled up by the person to whom the shareholder has intrusted it with a verbal authority to use it, and is valid when so filled up. But it is doubtful whether in all cases the secretary of a Company can competently insert a date when proxies have been returned undated.³

¹ For Companies regulated by Table A, see arts. 42 and 43.

² *Harben v. Phillips*, 23 Ch. D. 14.

³ *Ernest v. Loma Gold Mines Ltd.*, 1897, 1 Ch. 1.

It is for the chairman of the meeting to decide as to the validity of proxies, and the Court will not readily interfere with his decision.

Stamp Duty on Proxy.—A proxy to attend a meeting on a date specified therein, or any adjournment thereof, is sufficiently stamped with a duty of one penny, but this duty is insufficient if the meeting referred to is not specifically referred to by date, as say, "at the next election." The duty may be denoted either by an adhesive or an impressed stamp. The proxy cannot be stamped after execution, even although it may have been executed abroad.¹ If an adhesive stamp is used, the stamp must be cancelled by the person granting the proxy writing across the stamp his name or initials, with the addition of the true date of such cancellation.

If a person desires to execute a general proxy in favour of another to attend all meetings, etc., the duty payable on such deed is 10s.

If an unstamped or improperly stamped proxy is used at a meeting, the vote given thereunder is void. Over and above this, the person making and the person using the proxy are liable in a penalty of £50.²

Payment of Cost of sending out Proxy Forms.—Any payment for printing and sending out proxy forms containing the names of certain persons as proxies, and for stamping and paying the return postage thereon, is a misapplication of the funds of the Company beyond the power of a general meeting to sanction. In one case where such a payment had been debited to the Company, the Court did not order the repayment of the moneys so paid, but the directors were interdicted from thereafter using the Company's funds in paying the stamps or return postage stamps on any proxy

¹ It may be noted that the Revenue authorities have stamped proxies executed abroad when produced to them within thirty days of their receipt in this country.

² Stamp Act, 1891, sec. 80, sub-sec. 3.

forms, or in paying for the printing or sending out any proxy forms with the names of the proposed proxies therein, or otherwise calculated to influence the votes of the shareholders.

It seems to be within the powers of Companies to print and send out proper forms of proxy papers unstamped, which do not tend in any way to influence the votes of the shareholders receiving them.¹

Minutes of Meeting.—It is the duty of the directors to cause to be kept accurate minutes of what takes place at general meetings of the Company. (For statutory regulations as to minutes of meeting, see sec. 67 of Act of 1862.²).

RESOLUTIONS OF COMPANY.—Resolutions are of three kinds, viz. Ordinary, Special, and Extraordinary.

ORDINARY RESOLUTIONS.—Unless otherwise provided in the charter or other instrument by which the Company is incorporated, the resolution of a majority of the shareholders in general meeting duly convened, upon any question with which the Company is legally competent to deal,—such as borrowing money, declaring a dividend, or appointing directors,—is binding upon the minority, and consequently upon the Company. Every shareholder has a perfect right to vote upon any such questions, although he may have a personal interest in the subject-matter opposed to, or different from, the general or particular interests of the Company.

SPECIAL RESOLUTIONS.—There are acts connected with the affairs of a Company which cannot be done by the shareholders in general meeting without some preliminary procedure, and such procedure takes the form of a special resolution or an extraordinary resolution. A resolution passed by a Company is deemed to be “special” whenever it has been passed by a majority of not less than three-fourths of such members of the Company for the time being entitled, according to the regulations of the Company, to vote as may be present in person or by proxy (in cases where by the regulations of the Company

¹ *Studdert v. Grosvenor*, 1886, 33 Ch. D. 528.

² For which see Appendix.

proxies are allowed) "at any general meeting of which notice specifying the intention to propose such resolution has been duly given, and such resolution has been confirmed by a majority of such members for the time being entitled, according to the regulations of the Company, to vote as may be present in person or by proxy, at a subsequent general meeting of which notice has been duly given, and held at an interval of not less than fourteen days, nor more than one month, from the date of the meeting at which such resolution was first passed."

The procedure defined by the Act¹ must be strictly observed, otherwise anything that may be done is rendered void. It is only a majority in number and three-fourths in value of those who may be present at the general meeting, either in person or by proxy, who must agree. Hence any member present, but not voting, must be counted as voting against the resolution. At the confirmatory meeting a bare majority is sufficient; but it must be a majority of those present, whether they vote or not. The interval of not less than fourteen days which is to elapse between the meetings passing and confirming a special resolution of a Company, is an interval of fourteen clear days, exclusive of the respective days of meeting.

Notice of Meeting. Who may call same, and Chairman of Meeting.—Notice of any meeting for the above purposes is deemed to be duly given, and the meeting to be duly held, whenever such notice is given, and the meeting held in manner prescribed by the regulations of the Company. When the regulations are silent on the subject, a meeting is held to be duly summoned of which seven clear days' notice in writing has been served on every member in manner in which notices are required to be served by Table A.² This procedure applies to cases where the regulations have become unworkable, as well as to cases where there are no regulations. In default of any regulations as to the persons to summon meetings, five members can competently do so.

¹ Act 1862, sec. 51.

² For which see Appendix.

Requisites of Notice.—A notice of a special general meeting of a Company regulated by Table A, or by Articles similar to these regulations, sufficiently complies with art. 35 if it states the “general nature” of the business; but it is nevertheless desirable, where the business is of great importance, to supplement the notice with an explanatory circular.

A fresh notice, including a copy of the resolution to be confirmed, should be sent out for the confirmatory meeting.

What require a Special Resolution.—If the Articles provide that a special resolution is required before any particular business is done, this must be observed, but in any case the following acts necessitate a special resolution :—

1. To change the name of the Company.¹
2. To embark in a new business.
3. To alter all or any of the regulations of the Company contained in the Articles of Association, or any existing special resolution.
4. To make new regulations to the exclusion of, or in addition to, all or any of the regulations of the Company.²
5. To wind up the affairs of the Company without insolvency.³
6. To enable the liquidator of a Company, which is proposed to be, or is in the course of being, wound up altogether voluntarily, where the whole or a portion of its business or property is proposed to be transferred or sold to another Company, to receive in compensation or part compensation for such transfer or sale, shares, policies, or other like interests in such other Company for the purpose of distribution amongst the members of the Company being wound up, or to enable the liquidator to enter into any other arrangement whereby the members of the Company being wound up may in lieu of receiving cash, shares, or policies or other like

¹ Act 1862, sec. 13.

² *Ibid.* sec. 50.

³ *Ibid.* sec. 129, sub-sec. 2.

interests, or in addition thereto participate in the profits of, or receive any other benefit from, the purchasing Company.¹

7. To appoint inspectors to examine into the affairs of the Company.²
8. To require the Company to be wound up by the Court.³
9. To render unlimited the liability of the directors or managers, or of the managing directors.⁴
10. To divide the capital of the Company, or any part thereof, into shares of smaller amount than is fixed by the Memorandum of Association.⁵
11. To return accumulated profits to the shareholders in reduction of paid-up capital.⁶
12. To declare that any portion of the capital which has not already been called up shall not be capable of being called up, except in the event of and for the purposes of the Company being wound up.⁷
13. To reduce the capital of the Company,⁸ or cancel any lost capital or any capital unrepresented by available assets.⁹
14. To alter the provisions of the Memorandum of Association or deed of settlement of the Company.
15. To alter the form of the constitution of a Company by substituting a Memorandum and Articles of Association for a deed of settlement.¹⁰

Evidence of passing Resolution. — At any of the meetings above mentioned, unless a poll is demanded by at least five members, a declaration by the chairman that the resolution has been carried is deemed conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the same. But where a minute

¹ Act 1862, sec. 161. For position of dissentient shareholder, see sec. 161.

² Act 1862, sec. 60.

³ *Ibid.* sec. 79.

⁴ Act 1867, sec. 8.

⁵ *Ibid.* sec. 21.

⁶ Act 1880, sec. 3.

⁷ Act 1879, sec. 5.

⁸ Act 1867, sec. 9.

⁹ Act 1877, secs. 3 and 5.

¹⁰ Act 1890, sec. 1.

of meeting can be produced, signed by the chairman, showing that the resolution was not passed by the statutory majority, a subsequent declaration by the chairman to a contrary effect will not overrule or nullify the minute.¹

Registry of Special Resolutions.—A copy of any special resolution that is passed must, within fifteen days of its confirmation, be printed and forwarded to the Registrar of Joint Stock Companies, authenticated as required by the Act, and be recorded by him. There is a penalty attaching to a failure to comply with this regulation.² The resolution requires, before being filed, to be stamped with a duty of 5s. Further, a copy of every special resolution for the time being in force must be annexed to or embodied in every copy of the Articles of Association that may be issued after the passing of such resolution, under certain specified penalties.³

EXTRAORDINARY RESOLUTION.—A resolution is extraordinary which is passed in such manner as would, if it had been confirmed by a subsequent meeting, have constituted a special resolution.⁴ Notice of the intention to propose an extraordinary resolution must be given. It is not sufficient notice to propose an extraordinary resolution to give notice of the intention to propose a special resolution.⁵ Winding up on insolvency proceeds on an extraordinary resolution. An extraordinary resolution to wind up a Company voluntarily was held ineffectual, because the notices summoning the meeting had been issued by the secretary without the authority of a resolution of the directors duly assembled at a meeting of the board.⁶

The Companies Acts do not require that extraordinary resolutions should be registered with the Registrar of Joint Stock Companies, but it is usual to do so.

¹ *Cowan v. Scottish Publishing Co.*, 1892, 19 R. 437.

² Act 1862, sec. 53.

³ *Ibid.* sec. 54.

⁴ *Ibid.* sec. 129.

⁵ *Bridport Old Brewery Co.*, 2 Ch. 191.

⁶ *In re Haycroft Gold Reduction & Mining Co.*, 1900, 2 Ch. 230.

CHAPTER IX

CALLS ON SHAREHOLDERS AND BORROWING BY COMPANY

CALLS ON SHAREHOLDERS.¹—These may be considered under two heads, viz. directors' calls, and calls by a liquidator.

Directors' Calls.—The Companies Acts do not provide for the manner in which calls are to be made, but the Articles of Association of most Companies² contain the necessary regulations, and these must be strictly followed. The directors make the call by passing a resolution to that effect. To validate the call, it is necessary that the board of directors should be properly and duly constituted. If the directors are not all present at the meeting, a quorum competent to act must attend. In cases where a call is made at an irregular meeting, the resolution so made can be subsequently confirmed at a meeting where there is no irregularity.

Notice requires to be given to all the shareholders at their addresses as last registered in the books of the Company of the time and place appointed for the payment of every call. As a call becomes a debt due from the shareholder to the Company when it is made, interest is payable on the amount from the due date of payment until paid. Where the Articles provide for a special rate of interest, such interest is payable; but where no provision is made, legal interest, *i.e.* 5 per cent. is exigible. Again, the amount of a call when made can be

¹ For extent of liability of shareholders, see Act 1862, sec. 38.

² See Table A, art. 4, for regulations where Articles are silent on subject.

arrested in the hands of a shareholder at the instance of a creditor of the Company.

As a deceased member of a Company remains a member for the purposes of the Articles of Association so long as his name remains on the register without notice to the Company of his death, a call made after the death of a shareholder is payable out of his estate.

Apart from any provision in the Articles of Association giving the right, a limited Company has at common law a right of retention over the shares of its members in security of debts due by them to the Company. From this it follows that when a call has been made the directors may decline to register a transfer until provision has been made by the shareholder for payment of the call. It is settled that when shares are sold after a call has been made, the liability for the payment of the call does not, in the absence of an express agreement to the contrary, pass to the purchaser, but remains with the seller. Where there is a binding contract that calls are not to be made unless at specified periods, the directors so long as the Company is a going concern cannot accelerate the time for payment. It is otherwise when the Company is in liquidation, for such a contract is construed as merely to endure during the life of the Company, and has no application after its dissolution.

Payment of Shares in advance of Calls. Interest on Amount prepaid.—Where directors are empowered to receive payment from any shareholder of the whole or any part of the amount remaining unpaid on any shares held by him, and to pay out of the capital interest on sums so paid in advance of calls, such interest (there being no profit from which to pay the same) can legally be paid out of capital, as the interest is due to the shareholder in his character of creditor and not in his character as member.

Power by Special Resolution to declare that Portion of Capital shall not be called up unless in Liquidation.—A limited Company may by a special resolution declare that any portion

of its capital which has not been already called up shall not be capable of being called up except in the event of, and for the purpose of, the Company being wound up.¹

In one case, in the Articles of Association it was provided that £4 per share should be reserved capital, not capable of being called up except in case of a winding up, and that a special resolution to that effect should be passed in accordance with the Companies Act, 1879. No valid special resolution to that effect was passed, and ultimately a special resolution was passed repealing the Article ; and it was decided that this special resolution was valid in respect that a Company cannot contract itself out of the power to alter its Articles.

Where a call has been made but is outstanding at the date of the liquidation of the Company, the liquidator proceeds for its recovery under sec. 101 of the Act of 1862.

Defence to Action for Calls.—It is a good answer to a demand for payment of a call that although a person's name appears on the register of the Company he is not, in fact, a member thereof, nor has ever agreed to become one. Again, if a person is induced by fraud or misrepresentation, made by or on behalf of the Company, to take shares, he is, so soon as he discovers the fraud, entitled to repudiate the contract. An applicant for shares is bound to make himself acquainted with the terms of the Memorandum of Association as soon as it is registered ; and if he allows his name to be put on the register, after this he is bound by the terms of the Memorandum, unless he can prove fraud on the part of the Company, or of those acting on its behalf. Further, it is a good answer to a call that the call was not made in conformity with the regulations of the Company. While the Company is carrying on business and a call is made, a shareholder is entitled to set off against the call a debt due to him by the Company. To entitle him to this right, the completed transaction or the agreement to set off must be competently proved. When the Company is in liquidation it is otherwise.²

¹ Companies Act, 1879, sec. 5.

² See Calls by Liquidator.

It is no defence to a demand for a call that the Company is not fulfilling the object for which it was incorporated, or that the directors are mismanaging its affairs.

CALLS BY A LIQUIDATOR.—After the commencement of a winding up, the power of the directors to make calls on shares *ipso facto* comes to an end, and the only power to make calls is that which is by Statute given to the liquidator acting in the winding up. When a Company is in process of being wound up by the Court, the power to make a call is conferred on the Court.¹ The call may be made either before or after it has been found whether the assets will be sufficient to meet the liabilities. In a voluntary winding up the call is made by the liquidator.² In a winding up under supervision, the Court sanctions the call.

The call is made on all or any of the contributories for the time being settled on the list of contributories.³ Unlike calls made by directors while the Company is a going concern, the amount of the calls and the interval of time between them are not regulated by the Articles of Association.

Enforcement of Payment of Calls.—The Act of 1862⁴ provides a summary method for the enforcement of payment of calls. Under the section referred to, it is competent for the Court, on production by the liquidator of a list certified by him of the names of the contributories liable in payment of any calls, and of the amount due by each contributor, to pronounce forthwith a decree therefor; and such decree may, if the Court so direct, be extracted immediately. Notice of the proceedings does not require to be given to the persons from whom payment is sought. Decree passes as a matter of course, and no person against whom decree is asked under an application in virtue of sec. 121 is entitled to be heard against the granting of the decree. Suspension of the decree is competent upon caution or consignment, and also, with

¹ Act 1862, sec. 102.

² *Ibid.* sec. 133, sub-sec. 9.

³ For extent and nature of liability, see Act 1862, secs. 32, 67.

⁴ Sec. 121.

the special leave of the Court, without caution or consignation.

When it is necessary to enforce an order for payment of a call against a contributory residing in England, the order must be made an order of the Chancery Division in England before proceedings can be taken against the contributory.¹ As regards Ireland, it has been decided that under sec. 123 of the Act of 1862 it is sufficient to produce an office copy of the order to the proper officer of the Court of Chancery in Ireland, without making it an order of that Court.²

With regard to the enforcement of calls against a person resident in Scotland as a contributory of a Company domiciled in either England or Ireland, the order to pay the call may be registered and certified by the Bill Chamber clerk, and thereupon becomes a sufficient warrant on which to charge and use further diligence, as upon a Court of Session decree.³

After a winding up has commenced, whether by the Court or otherwise, it is too late for a contributory to commence proceedings to have his name removed from the list of contributories on the ground of fraud on the part of the Company or others on its behalf. The reason of this is that innocent third parties may have acquired rights which might be defeated or prejudiced by the rescission. Of course, if the challenge is made before the winding up has commenced, it is otherwise.

A contributory cannot refuse to pay calls to the liquidator on the ground that the Company is indebted to him. The reason is that these calls are due by him to a different person from the person who has to pay him, or, at all events, to the same person in a different capacity. The Company before liquidation was his debtor. But the liquidator is not the Company. No doubt he acts and sues in name of the Company. But he is a statutory trustee for the equal and rateable payment

¹ *In re City of Glasgow Bank*, 1880, 14 Ch. D. 628.

² *In re Hercules Insurance Co.*, 6 Irish Eq. Rep. 207.

³ Act of Sederunt, 1883.

of all the creditors of the Company, and is bound to ingather the assets of the Company, not for the shareholders, but, in the first instance, for the creditors of the Company, who have a preference over the shareholders, and have a right to a *pari passu* preference among themselves.

When all the creditors of a Company, whether limited or unlimited, are paid in full, any moneys due on any account whatever to any contributory from the Company may be allowed to him by way of set off against any subsequent call or calls.¹

In the case of unlimited Companies, when a contributory is ordered to pay money due by him (other than liquidator's calls), he may set off against such debts any money due to him on any independent contract or dealing with the Company, but not any moneys due to him as a member of the Company in respect of any dividend or profit.²

BORROWING POWERS OF COMPANIES.—The Companies Acts do not confer on all Companies registered under them power to borrow money or issue negotiable instruments. Such a power must be conferred by the Company's Act of Incorporation, either expressly or by implication, as necessarily incident to the purposes for which the Company is incorporated.³ The directors of a Company formed for the purpose of trading have power to borrow money to a reasonable amount for the Company's necessities,⁴ but the power is confined to the directors, and does not extend to managers or agents of the Company. Where a Company has upon the face of its Act of Incorporation only a limited authority to borrow, a person dealing with such a Company must either inquire, or run the risk of the Company exceeding its powers.⁵ No *ultra vires* contract or act is capable of ratification even by a majority of the members. A lender is not bound to do

¹ Act 1862, sec. 101.

² *Ibid.* sec. 101.

³ *Baroness Wenlock v. River Dee Co.*, 10 App. Ca. 354; *Ashbury Co. v. Riche*, L. R. 7 H. L. 653.

⁴ *General Auction Estate and Monetary Co. v. Smith*, 1891, 3 Ch. 432.

⁵ Per Brett, L. J., in *Chaples v. Brunswick Building Society*, 6 Q. B. D. 715.

more than acquaint himself with the constitution of the Company as contained in its Memorandum and Articles of Association; and if he find in these no prohibition, but a power to borrow on condition, for example, of the power being confirmed by a resolution of the Company, he is entitled to assume that such resolution, if it appear on the face of a document authorising the borrowing, has been duly and properly arrived at; since he has no means of knowing, if everything is *ex facie* in order, whether the internal regulations of the Company have been complied with or not.¹ A Company which is not authorised by its Memorandum or Articles to borrow, and which is not a Company formed for the purpose of trading, has no power to overdraw its banking account, either with or without security. A mining Company, a cemetery Company, a railway Company, a salvage Company, a gas Company, and a waterworks Company, have all been held to be non-trading Companies. Consequently, a person who lends to such a Company is not the creditor of the Company, though where he has taken security he may hold it for repayment of so much of the money advanced as has been applied in payment strictly of the Company's debts, but the burden of proving that the money has been so expended rests upon him. Where a power to borrow is contained in the Memorandum and Articles of Association, it is usually coupled with a power to grant cash-credit or other bonds or debentures, dispositions, and other conveyances, bonds and dispositions in security, bills of sale, mortgages, or other documents over the Company's property or any part thereof, including the uncalled capital.²

Mode of Borrowing.— If a Company have the power to borrow, or if the power to borrow be incidental to the conduct of its business, but the Articles of Association specially provide that certain formalities must be observed in order to bind the Company, such formalities must be observed in order to constitute a valid charge upon the Company's property. But if

¹ *Howard v. Pat. Ivory Co.*, 38 Ch. D. 156.

² As to uncalled capital, see p. 126.

the lender be informed, and *bonâ fide* believe and act upon the information furnished him by the Company or its recognised officials, he will be protected. Thus, in one case, the Articles of a Company provided that cheques above a certain amount should be signed by such of the directors as might be appointed by the Company. A resolution of the Company appointing certain directors for this purpose was communicated to a bank, and the bank accordingly *bonâ fide* paid large sums on cheques signed by these directors. It subsequently transpired that the directors were acting as such without any legal right to do so, no appointment of directors having been made by the shareholders. It was held that the payment of these cheques was a good payment as against the Company, and that the bank, having the written authority of a *de facto* secretary, were not bound to inquire whether he was the properly-constituted secretary of the Company, but were justified in acting upon his written authority.¹

Liability of Directors exceeding Power to borrow.—If directors assume an authority to borrow money which they do not possess, or act under an honest misapprehension of the extent of their powers or authority to borrow money, and induce a person to deal with, or lend money to, the Company on the faith of such assumed or excessive authority, upon representations which are unfounded in fact, they will render themselves personally responsible for any loss which may accrue. The misrepresentation must, however, be one of fact and not of law. Thus the directors of a Company possessing powers to borrow with the consent of a general meeting of shareholders, but not otherwise, render themselves personally liable if they obtain a loan on the representation that they have obtained authority for it, when as a matter of fact they have not. But where three directors of a railway Company opened, on behalf of the Company, a bank account and requested the bank by letter to honour cheques signed by any two directors and countersigned by the secretary, it was held

¹ *Mahony v. East Holyford Mining Co.*, L. R. 7 E. & J. App. 869.

that, assuming the letter to contain a representation that the directors had authority to overdraw the account, which in point of fact was not the case, it was not a representation in fact but in law for which the directors were not personally responsible, and that the bank was able to enforce the same remedies against the Company as if the representation had been true.¹

Power to sign Bills and Cheques.—The form in which a bill or note is to be drawn, indorsed, or accepted so as to bind the Company, is regulated by the 47th section of the 1862 Act, which provides that a promissory note or bill of exchange shall be deemed to have been made, accepted, or indorsed on behalf of any Company under the Act, if made, accepted, or indorsed in name of the Company by any person acting under the authority of the Company, or if made, accepted, or indorsed by or on behalf or on account of the Company by any person acting under the authority of the Company. This section does not, however, in any way authorise every Company to issue or accept bills; it merely prescribes the form which must be adopted by such Companies as have power to issue and accept bills.

DEBENTURE AND DEBENTURE STOCK

DEBENTURE.—The term “Debenture” is generally applied to a bond granted by a railway or other incorporated Company, whereby, in consideration of money advanced in security of the debenture, the whole property and assets of the Company are charged with repayment of the loan at a certain stated period and at an agreed-on rate of interest. Primarily, however, a debenture is merely a personal obligation by the Company for repayment of the money. The Companies Acts do not deal in express terms with the subject of debentures.

A Company has not the right, as an incident of its incorporation, to borrow money or issue debentures or debenture stock. Such a power must be expressly conferred, or flow naturally from the avowed objects of the Company.

¹ *Cherry v. Colonial Bank of Australasia*, 1869, L. R. 3 P. C. 24.

When granted, debentures are usually issued in blocks and for round sums, each separate debenture bearing to be one of the series all repayable at the same date, and ranking *pari passu, inter se*.

Form of Debenture.—The debenture should be issued in strict conformity with the regulations of the Company. If this is not done, and anything material to the validity of the deed is omitted and is apparent, the right of the creditor may thereby be affected. But if the deed is ostensibly in order, although all the requirements of the Company as to issue have not been observed by the directors, the right of the holder is not thereby prejudiced.

To whom Debentures issued.—Debentures are usually issued in favour of a person named therein and his heirs, executors, and assignees. They may, however, be issued to a named person or his order, to a named person or other the registered holder, to a named person or bearer, or simply to bearer.

Issue of Debentures at Discount.—Unlike shares, debentures can be issued at a discount.¹

Position of Holder of Debentures.—The position of persons holding debentures in ordinary Joint Stock Companies is this, that they are creditors having merely the personal obligation of the Company to give delivery of certain of their assets, just as the other creditors for ordinary trade debts have obligations of the Company for the payment in full of the debts due to them respectively. All the creditors holding merely the personal obligation of the Company must in a liquidation be treated alike, none being entitled to an advantage not already otherwise secured over the others. There is nothing, however, incompetent, where power to that effect is given, for a Joint Stock Company to convey securities to trustees for debenture-holders; but such security must be given and completed according to the law of the country where the property conveyed in security is situated. Hence ordinary Joint Stock Companies having their registered office in Scotland have not the peculiar

¹ *Webb v. Shropshire Railway Co.*, 1893, 3 Ch. 307.

privilege of creating securities over their moveable property or leasehold subjects of which they remain in possession. Nor can they take power in the Memorandum and Articles of Association to grant debentures, secured over their moveable property, retaining possession which will be effectual to the debenture-holders against the ordinary creditors of the Company in a winding up. It might as well be argued that by its deed of constitution a Joint Stock Company could effectually provide that its property should not be liable to the diligence of pouncing or arrestment. A Company cannot, by the terms of its own constitution, abrogate the general law of the country regarding legal diligence affecting its own property. So in like manner, without statutory authority a Company cannot by its Articles of Association make a law for itself contrary to the common law, for the creation of securities over its property which will be effectual, though wanting the essential requisites.

An express Act of Parliament is necessary in order to give directors of Joint Stock Companies in Scotland power to grant effectual debentures over their moveable property while they retain possession. There are Statutes which do give this power. For example, the Companies Clauses Act of 1845 provides, in its enactment and the relative schedules appended to it, for the granting of mortgages or debentures. This Statute authorises Companies, under any Statute by which its clauses are incorporated, to grant mortgages which shall affect their whole undertaking, so that Companies which come under this Act, such as railway Companies and others, have power by Statute to grant debentures by which their whole undertaking is affected, and the debenture-holders without possession acquire an effectual security over the whole property of the Company. There is no such provision in the Companies Acts, and no provision which by implication can be held to give such important powers. Where, however, a Company has power to issue debentures and to give security for the due repayment thereof, it may do so, but the right of the debenture-holders to a preference is contingent on their

security being properly completed. This may be illustrated by reference to the following case, *Clark v. West Calder Oil Co.*¹ In that case the West Calder Oil Company, at an extraordinary general meeting of the Company, proposed that the directors should be authorised to issue debentures on the security of the works, lands, property, and other assets of the Company; and this resolution having been confirmed by a subsequent meeting, became binding on the Company. Following upon this debentures were issued, and certain securities were granted to trustees in trust for the debenture-holders. The securities consisted of—(1) a trust disposition of the Company's heritable property, and (2) an assignation to leases of various durations, together with the whole plant and machinery in use by the Company. The disposition to the heritable property was duly recorded in the appropriate register. The assignation was duly intimated to the landlords in the various leases, but no steps were taken by the trustees for the debenture-holders to enter into possession of the leases or of the moveables or plant on the ground. Subsequently the Company went into liquidation, and shortly thereafter a supervision order was pronounced under which the liquidation was carried on. The debenture-holders claimed a preferential ranking over the securities conveyed in the foregoing deeds, but their right to do so was challenged by the ordinary trade creditors, who contended that the debenture-holders were only entitled to a *pari passu* ranking with them. In the action the Court found that, as regards the heritable property, the debenture-holders had a good security over it, on the ground that their title to it had been legally completed, but as regards the leasehold and moveable property they had no preference over the ordinary trade creditors of the Company, as no possession had followed on the assignation. Had this case occurred with an English Company the result would have been different. In a case decided by the Courts there, a steamship Company having power to issue mortgages, bonds, or debentures, issued mortgage debentures

¹ 1882, 9 R. 1017.

charging the undertaking, and all sums of money arising therefrom, with the repayment of the money borrowed and interest. Before the debentures became due the Company was wound up, and the ships and other property of the Company were sold. In a question between the general creditors and the debenture-holders, it was held that the latter acquired a charge upon all the property of the Company past and future by the term "undertaking," and that they were entitled to be paid out of the property of the Company in priority to the general creditors.

In whose favour Security granted.—When property belonging to the Company is conveyed in security, the conveyance is taken to a trustee or trustees for behoof of the debenture-holders, with power to such trustee or trustees to hold the security subjects, and if necessary to administer and realise them. The arrangement is set forth in a trust deed for behoof of debenture-holders, and in the deed it is usually provided that the security shall become enforceable on the occurrence of a certain event, such as the Company failing to pay interest and principal within a certain time; a winding-up order being pronounced against the Company; the Company going into voluntary liquidation, or the breach of any of the covenants or conditions of the trust deed.

How Security completed.—If the security is heritable property, the conveyances must be registered in the appropriate Register of Sasines. Long leases will be similarly treated. If ordinary leases, possession must follow on the assignation. If ships, the mortgage or bill of sale must be registered in the register of shipping at the port of the ship's registry. If moveables, such as stock-in-trade, etc., possession by or on behalf of the trustees must follow. In many Companies the Memorandum authorises the directors to mortgage the uncalled capital. So far at least as Companies having their registered office in Scotland are concerned, the only effectual way by which this can be accomplished is by a formal assignation of that capital to the trustees, and this assignation must be intimated to all the shareholders.

Personal Liability of Trustees.—In the event of the security subjects being depreciated or lost through their neglect of duty, trustees for debenture-holders are personally liable to make good the loss in the same way and to the like extent as are ordinary trustees.¹

Position of Debenture-holders where Scheme of Arrangement approved of by Court in Liquidation of Company.—Where a scheme of arrangement with creditors has been agreed to by the requisite majority, in terms of the Joint Stock Companies Arrangement Act, 1870,² and is subsequently sanctioned by the Court, the arrangement or compromise is binding on all creditors or classes of creditors. It has been settled that when a scheme has been approved by the necessary majority of the creditors, the Court has power to sanction it, although its effect may be to deprive a dissentient minority of their security either in whole or in part, and even when it involves their conversion from the position of creditors into that of preferential shareholders fully paid up.³

Stamp Duty on Debentures.—The stamp duty on each debenture is at the rate of 2s. 6d. per cent.⁴

Transfer of Debenture.—There is no fixed form for the transfer of a debenture. Some Companies have a special form, others again accept a transfer in ordinary form on the back of the debenture, while others again accept a transfer in the form given in the schedule to the Transmission of Moveable Property (Scotland) Act, 1862. In whatever form the transfer is made, the right of the creditor is not completed until intimation thereof is sent to the issuing Company. The fee payable to the Company for intimation is usually 2s. 6d.

Stamp Duty on Transfer.—The transfer following on a sale must be stamped with a duty of 10s. per cent. on the purchase price. Where the debenture is assigned, say to a bank, as a

¹ *Wooley v. Guthrie Smith and Others*, 30th Nov. 1894, 2 S. L. T. 338.

² For which see Appendix.

³ *Gillies v. Dawson*, 1893, 20 R. 1119.

⁴ Stamp Act, 1891, Schedule *vide* Mortgage.

floating security, and the consideration in the transfer is nominal, the stamp duty is 10s.

DEBENTURE STOCK.—Debenture stock is a loan by a multitude of lenders,¹ whose title consists of a certificate by the Company that they hold specified portions thereof, under provisions as to periodical payment of interest and repayment of principal, and whose interests are intrusted to trustees, who generally hold subjects conveyed by the Company in security, and are empowered and directed on default in payment of interest, or on a supervening liquidation, to enter into possession, administer the property, carry on the business, and realise the estate for the benefit of the debenture-stock holders. Unlike debenture bonds, the amount of the stock held by the different lenders need not be a round sum. It may be for any number of pounds, or fractions thereof, unless the regulations of the Company otherwise provide.

Payment of Principal.—Debenture stock may be payable or redeemable at a specified date, or on the expiry of a certain number of years, or on the expiry of a specified notice in writing, which may follow upon stipulated drawings, or in the event of interest being for a specified time in arrear, or in the event of a winding up. If no period be stipulated, the debenture stock being styled "perpetual," the loan will be payable on liquidation, or, if the trustees have taken possession, in the due course of their administration.

Stamp Duty.—The stamp on debenture stock is paid on the whole issue at once at the rate of 2s. 6d. per £100, and is impressed on the deed, or, if more than one, the principal deed creating the stock, the other or subsidiary deed bearing a 10s. stamp. If additional security is subsequently given, or security substituted, a stamp duty at the rate of 6d. per £100 is chargeable. When the above duties have been paid, the certificates of debenture stock require no stamps.

Transfer of Debenture Stock.—Unless otherwise provided by the Company's regulations, a transfer of debenture stock

¹ Lindley on *Company Law*, p. 195.

is made on the usual printed form for the transfer of shares—the word stock being substituted for shares.

Stamp Duty on Transfer.—The like duties are exigible as on a transfer of a debenture bond (see *supra*).

REGISTER OF MORTGAGES.—Every limited Company must keep a register of all mortgages and charges specifically affecting property of the Company, the particulars to be entered in the register. The penalty for failure to comply with these provisions, and the right of inspection of the register, are contained in sec. 43 of the Act of 1862, to which reference is made. A failure to comply with the statutory requirements does not of itself invalidate the security, nor are the rights of parties with regard to priority regulated by the register. This is so although the creditor may be a director of the Company.

In the Companies Act of 1900, regulations are made requiring certain Companies to file with the Registrar, mortgages and charges created by them. The provisions of that Act, however, with respect to the registration of mortgages and charges, do not apply to Companies registered in Scotland.¹

¹ Act 1900, sec. 34 (2).

CHAPTER X

ACCOUNTS AND DIVIDENDS

ACCOUNTS. — With the exception of banking Companies, the Companies Acts do not require Companies to keep accounts, still less to keep them in any particular form. The only enactment on the subject is sec. 26 of the Companies Act, 1862, and Form E in the second schedule to that Act, and these relate solely to the nominal capital and calls. But although this is so, yet, as a matter of business, accounts of some sort must be kept. In order to show what has been subscribed by the shareholders and what has become of the money so subscribed, and to show the results of the Company's trading or business, it is necessary to keep a "capital account" and a "profit and loss" account. As a matter of business, these accounts ought to be kept as business men usually keep such accounts. Accordingly, provision is found for keeping such accounts in Table A in the Appendix to the Act of 1862,¹ and in the Articles of Association of most if not all Companies.

Principles upon which the Accounts of a Trading Company should be kept.—On the one side of the account the liabilities of the Company should be stated, treating the sum which has been subscribed by the shareholders as a liability for the purpose of bringing it into account as against the assets which fall to be put down on the other side. Then on the same liability side the current and other liabilities and reserve funds are stated, and the sum of these is the total

¹ See arts. 78–82 in Appendix.

amount of the liabilities of the Company. On the other side the whole assets are stated, which are usually divided, for the purpose of giving information to the shareholders, into various heads, the money value of the assets being given. When the two sides of the account are compared, where there is a surplus of assets over liabilities, such surplus is, unless there is something in the Articles which would prevent the directors and prevent the Company from dividing the sum which thus stands to their credit, the amount available for division as profit.¹

DIVIDENDS.—There is nothing in all the Companies Acts about how dividends are to be paid, nor how profits are to be reckoned. Again, there is nothing in the Acts which requires the capital to be made up if lost; nor do the Acts preclude the payment of dividends if the assets are of less value than the original capital.

The Statutes do not even expressly and in plain language prohibit a payment of dividend out of capital. But the provisions as to capital, when carefully studied, are wholly inconsistent with the return of capital to the shareholders, whether in the shape of dividends or otherwise, except, of course, on a winding up. If a Memorandum of Association contained a provision for paying dividends out of capital, such provision would be invalid, for the reason that the main condition of limited liability is that the capital of a limited Company shall be applied for the purposes for which the Company is formed, and that to return the capital to the shareholders, either in the shape of dividend or otherwise, is not such a purpose as the Legislature contemplated.

A dividend presupposes a profit in some shape; and to divide as dividend the receipts, say for a year, without deducting the expenses incurred in that year in producing the receipts, would be as unjustifiable in point of law as it would be reckless and blameworthy in the eyes of business men. The same observation applies to payment of dividends out of borrowed money. If the income of any year arises from a consumption in that

¹ *Lubbock v. British Bank of South Africa*, 1892, 2 Ch. 198.

year of what might be called circulating capital, the division of such income as dividend without replacing the capital consumed in producing it will be a payment of a dividend out of capital.

Capital in this connection may be referred to as either fixed or circulating, and there is this distinction between the two. Fixed capital is that from which the return is got by holding and drawing the income from its use or employment. Circulating capital, on the other hand, is that from which the profit is got by parting with it or turning it over and so receiving back, if the transaction is successful, an enhanced price.

What losses can properly be charged to capital and what to income is a matter for business men to determine, and is often a matter on which there is considerable diversity of opinion. There is no hard-and-fast legal rule on the subject. There can, however, be no doubt that if expenses or payments are obviously improperly charged to capital, and are so charged simply to swell the apparent profits, and to make it appear that dividends may be properly declared and paid, dividends paid under any such circumstances cannot be treated as legitimately paid out of profits, and can no more be justified than if they were paid out of capital.¹

There is no law to prevent a Company from sinking its capital in the purchase of a property producing income, and dividing that income without making provision for keeping up the value of the capital; and that fixed capital may be sunk and lost, and yet the excess of current receipts over current expenses may be applied in payment of a dividend.

But if the Company have a permanent property which would not be reasonably or properly so consumed, but the fruit of which would be used in providing profit, then if the directors were to sell, or the shareholders were to authorise a sale of that, and then to declare a dividend out of the proceeds, that would clearly be *ultra vires*, for it would be applying the capital of the Company to a purpose which was not authorised.

¹ *Bloxam v. The Metropolitan Railway Co.*, L. R. 3 Ch. 337, 350. *In re The London and General Bank*, 1895, 2 Ch. 673, 686.

Again, a Company cannot pay a dividend without providing for repairs and depreciation of plant occasioned by using it in the ordinary course of the Company's business—a tramway company, for instance, must keep its lines in proper working condition.

If a Company is formed to acquire and work a property of a wasting nature,—for example, a mine, a quarry, or a patent,—the capital expended in acquiring the property may be regarded as sunk and gone; and if the Company retains assets sufficient to pay its debts, there is nothing in the Companies Acts to prevent any excess of money obtained by working the property over the cost of working it from being divided amongst the shareholders.

Where nominal or share capital is diminished in value, not by means of any improper dealing with it by the Company, but by reason of causes over which the Company has no control, or by reason of its inherent nature, that diminution need not be made good out of revenue. In such a case a dividend may be paid out of current annual profits, out of profits arising from the excess of ordinary receipts over expenses properly chargeable to the revenue account, provided there is nothing in the Articles of Association prohibiting such an application, and provided it is done openly.

Where the income of a Company arises from the turning over of circulating capital no dividend can be paid unless the circulating capital is kept up to its original value, as otherwise there would be a payment of dividend out of capital.

A Company may be formed on the principle that no dividends shall be declared unless the capital is kept undiminished, or a Company may contract with its creditors to keep its capital or assets up to a given value. But, in the absence of some special Article or contract, there is no law to this effect.

There is no obligation imposed by law or Statute to create a reserve fund out of revenue to recoup the wasting nature of capital. Subject to any provision to the contrary contained in the Articles, the disposition of the revenue is entirely in the hands and under the control of the Company.

A dividend can be declared only out of profits ; but profits may be, and in most cases are, reached by estimate. The profits may be considered as earned though they do not exist in the shape of money in the coffers of the Company or its bankers ; and money may require to be borrowed to pay the dividend. But if the Articles declare that the dividend is to be paid only out of "realised profits," that is, "profits tangible for the purposes of division," no dividend can be paid unless this condition is fulfilled.¹

The Articles of Association² of most Companies provide for the payment of dividend ; and these regulations, if not inconsistent with the Companies Acts, must be complied with. Although, almost invariably, it is the directors who recommend the payment of a dividend, the voting of a dividend is an act of the shareholders and not of the directors. So long as the powers of the Company are not exceeded, the Court will not readily interfere in the matter of dividends.

The Articles of Association must be looked to in determining in what manner and upon what capital the dividends are to be paid. Where the Articles do not provide for the manner in which or upon what capital the dividends are to be paid, the determination of the question is left to the common-law principle regulating the division of profits according to the ordinary law of partnership. In such a case the proper division is that the dividend shall be proportioned to the amount of paid-up capital held by each shareholder.

Difficult questions arise as to the payment of dividends where the shares of a Company are divided into preference and ordinary. The preference to be allowed the former class of shares in the matter of dividend is always a subject of stipulation in the Articles. When the profits of the Company are sufficient for the purpose, and in the absence of agreement to the contrary, preference shareholders are entitled each year to receive their dividends in full, irrespective of the sum, if

¹ *Oxford Building Society*, 35 Ch. D. 502.

² See Table A, 72 *et seq.*

any, available for division among the ordinary shareholders. But when the profits are not sufficient in any year to pay their dividend, preference shareholders are entitled in subsequent years to have the deficiency made good. If, however, the Articles provide that the preference shareholders are to be paid a specified dividend out of the profits of "each year," they are not entitled in subsequent years to have any deficiency in former years made good to them. When the preference shareholders are to be paid their dividend out of the profits of each year, the question what expenses are to be charged to revenue becomes of considerable importance. It has been decided that the holders of preference shares, the dividend on which was "dependent on the profits of the particular year only," were entitled to a dividend out of the profits of any year after setting aside a proportionate amount of the sums that had been expended on the undertaking of the Company sufficient for the maintenance of the undertaking for that year only, and were not to be deprived of that dividend in order to make good the sums which in previous years should have been set aside by the Company for maintenance, but which had been improperly applied by them in paying dividends.¹

*Payment of Dividends in proportion to Shares. Shares fully and partly paid up.*²—Without some express authority in the original regulations of the Company, or in regulations which the Company are enabled to make by way of alteration, a Company cannot pay a dividend in proportion to the amount paid up on each share in cases where a larger amount has been paid on some shares than on others, as all the shares are entitled to participate equally in dividend without regard to the amount paid up on each.³ Sub-sec. 3 of sec. 24 of the Act of 1867 does not get over this difficulty.

Guarantee of Dividends.—It sometimes happens that a vendor of the Company guarantees the due payment of a

¹ *Dent v. London Tramway Co.*, 16 Ch. D. 344.

² See also *Founders' Shares*.

³ *Oakbank Oil Co. v. Crum*, 1882, 8 App. Cases, 65.

certain dividend for a specified number of years. In such a case, and in the event of the Company being wound up during the period for which the guarantee has been given, the question arises whether the guarantee fund was meant to form part of the assets of the Company, and, as such, available to the creditors in a liquidation, or was it money specially appropriated for the benefit of the shareholders. The terms of the contract must determine the question. There have been cases where the guarantee fund was held to belong to the creditors, and cases where the decision was in favour of the shareholders. If the real intention of the contracting parties is that the contract is to be for the benefit of the shareholders and not of the Company, this will receive effect. In such a case the payment to the Company by the person guaranteeing the dividends is mere machinery: the Company is only the medium by which the money is to be paid to the shareholders; it is to be paid to the Company as into an office, that it may be distributed to the shareholders.

INCOME TAX.—By the Income Tax Act of 1853,¹ every person residing in the United Kingdom is liable to pay tax in respect of the annual profits or gains arising or accruing to him from any kind of property whatever, whether situate in the United Kingdom or elsewhere, and for and in respect of the annual profits or gains arising or accruing to any person residing in the United Kingdom from any profession, trade, employment, or vocation, whether the same shall be respectively carried on in the United Kingdom or elsewhere.

Companies are charged with the like duties as are individuals, and a Company is resident where its registered office is situated.

When a person resident in Great Britain—and the same rule applies to a Company—has a business which he carries on solely abroad, he is not liable to pay income tax in this country upon the profits or receipts of that business, except in respect of so much of them as come into his hands in this country. Where a person carries on two businesses, one of

¹ 16 & 17 Vict. c. 34, s. 2, sch. D.

which is carried on in Great Britain and another wholly distinct business which is carried on abroad, in assessing income tax the profits from the two businesses are not massed, but are kept distinct, and such person is assessed only as regards the foreign business in respect of so much money as he gets out of that business and as comes into his hands in this country.

But where there are in reality no two distinct businesses—as where a Company having its registered office in this country carries on part of its business here and the other part abroad—there is no separation of profits in a question of income tax. The whole profits of the Company are assessed here for income tax, and that although a portion of the profits earned is not remitted to this country, but is applied for the purposes of the Company in the foreign country.¹

What is taxed.—What is taxed is the amount of profits and gains. Everything of the nature of income is assessed from whatever source it is derived, whether from invested capital or from skill and labour, or from a combination of both, and whether temporary or permanent, steady or fluctuating, precarious or secure. Nor does it make any difference on the incidence of the tax that the income has been created by the sinking of the capital instead of being merely the natural annual product of an invested sum which remains unconsumed and undiminished by the consumption of the income which it yields.

The profits and gains are to be ascertained on ordinary principles of commercial trading, by setting against the income earned the cost of earning it. The Statute refuses to take an ordinary balance-sheet, or the net profits thereby ascertained, as the measure of the assessment, and requires the full balance of proof without allowing any deduction except for working expenses, and without regard to the state of the capital account, or to the amount of the capital employed in the concern, or sunk or exhausted or withdrawn.

¹ *London Bank of Mexico and South America v. Apthorpe*, 1891, 2 Q. B. 378.

CHAPTER XI

ALTERATION OF MEMORANDUM OF ASSOCIATION AND ALTERATION OF CAPITAL

ALTERATION OF MEMORANDUM OF ASSOCIATION.—By the Act of 1862 power was given to a Company limited by shares, after satisfying the provisions of the Act, to alter its Memorandum of Association in the following respects, namely, to increase its capital, to consolidate and divide its capital into shares of larger amounts than its existing shares, to convert its paid-up shares into stock, and to change its name.¹ A further extension of the privilege was provided by the Act of 1867.² As doubts existed whether the powers given by that Act to a Company to reduce its capital extended to paid-up capital, the Act of 1877 was passed to remove these doubts.³ With the limited exceptions specified in the three Acts just referred to, no Company incorporated under the Acts could in any way competently alter its Memorandum of Association. As hardships undoubtedly arose on this account, the Companies (Memorandum of Association) Act, 1890, was passed.⁴ The object of that Act was to enable Companies to enlarge the scope of their Memorandum so as to relieve themselves, to the limited extent defined by the Act, of an incapacity which disabled trading Companies, created for certain definite purposes, from undertaking any kind of business or entering into any contracts which were not warranted by the terms of their

¹ Act 1862, secs. 12 and 13.

² See Appendix.

³ Secs. 9 and 21.

⁴ For which see Appendix.

original constitution, either expressly or by implication. It is not a general Act to enable Companies at their will and pleasure to alter their Memorandum, nor does it confer any such power on the Court. The alterations that are to be made in the Memorandum must be confined to those which are carefully specified.

The Court will not sanction a resolution by a Company to alter its Memorandum merely because the resolution appears reasonable or proper in the interests of the Company itself, but must be satisfied that the conditions under which the Statute allows the Memorandum to be enlarged are complied with. These conditions are of two kinds—(*first*) the Statute allows the alteration of the Memorandum only for certain limited and definite purposes, and the Court will not confirm a resolution for altering a Memorandum unless it appears that such alteration is required for these purposes; and (*second*) even if it did so appear, the Court will not confirm a resolution unless on being satisfied that sufficient notice has been given to all persons interested, and that the interests of those who are entitled to object have been duly secured. The Court is required to be satisfied that with respect to every creditor who, in the opinion of the Court, is entitled to object or to signify his objection in some manner, that he gave his consent, or that his debt or claim has been discharged or determined, or that he has been secured to the satisfaction of the Court.¹ The holders of debentures or debenture stock receive intimation by advertisement or service of the proposed change, and all concerned creditors or shareholders are entitled to appear and oppose the confirmation.

General Powers will not be granted.—Thus a Company resolved to extend its objects, and passed a special resolution under sec. 1 of the Act of 1890, by which it took powers, *inter alia*—(1) to acquire the business of any other Company carrying on the same business as itself, and pay for such

¹ *Glasgow Tramway and Omnibus Co. Ltd. v. The Lord Provost, Magistrates, and Town Council of Glasgow*, 1891, 18 R. 675.

business in cash or stocks, or partly in each ; (2) to sell the business or property of the Company, or any part thereof, for payment in cash or in stock or securities of any other Company, or partly in each, or for such other consideration as might be deemed proper, and to distribute the price among its members ; and (3) to amalgamate with any other Company in the United Kingdom established for objects similar to its own. On the Company petitioning the Court to confirm the above resolutions, the Court refused to do so on the ground that it was not contemplated by the Act that such general powers should be granted before any necessity for using them arose, although upon consideration of any proposed transaction such powers might be sanctioned.¹

Power has been conferred on a Company to so far alter its deed of incorporation as to make it competent for the Company to invest its floating capital in such stocks, funds, securities, or other investments as the Company or the directors might think proper.

The power given under head (*d*) of sec. 5 is very wide, and has been held to extend, in the case of an investment Company, from Foreign, Colonial, or British Government or municipal securities, to securities of any Company incorporated under Foreign, Colonial, or British law, but subject to the condition that the name of the Company should be so altered that persons dealing with it might not be misled into supposing that its investments were limited to Government securities.² The Court has, however, refused to confirm a special resolution of a Company, incorporated for the purposes of acquiring a cattle ranch, and of buying, grazing, breeding, and selling live stock in the United States of America, desiring to alter its Memorandum of Association so as to enable it to carry on, along with the original business, the business of lending money on the security of moveable property, including cattle and other

¹ *Young's Paraffin Light and Mineral Oil Co. Ltd. Petr.*, 1894, 21 R. 384.

² *In re Foreign and Colonial Government Trust Co.*, 1891, 2 Ch. 395. See also *In re Governments Stock Investment Co.*, 1891, 1 Ch. 649 ; 1892, 1 Ch. 597.

live stock, and of certain stocks and shares, or on the personal obligations of persons or corporations engaged in the live stock business in America. As ancillary to these objects, it was proposed to give the Company power to borrow on debentures, money to be employed in the increased prosecution of the lending business. Answers to the petition were lodged by certain dissentient shareholders. The Court refused the prayer of the petition, holding that while the new business proposed was likely to be profitable, it would depend for its success on the management of the local agent of the Company, and would not be sufficiently under the control of the directors of the Company, and that, consequently, it was not such an extension of the primary business of the Company as could be forced on dissentient shareholders.¹

Change of Name on Alteration of Memorandum.—Where it is proposed to increase the scope of the business of a Company, the Court may, as a condition of confirming the resolution, stipulate that the name of the Company should be changed, so as to indicate the nature of the proposed extension of business. In one case, the Scottish Accident Insurance Company Ltd., which was established under its Memorandum for the purpose of carrying on the business of insurance against or upon accidental injuries to human life, and against injury to and destruction of property from any accidental cause other than fire, petitioned the Court for confirmation of a resolution to alter its Memorandum of Association to the effect of enabling it to undertake life, fidelity, and certain other classes of insurance business. The Court confirmed the resolution, on condition that the name of the Company should be altered in such a manner as should be approved of by the Court, so as to indicate the change which was being effected in the character of its business. The name ultimately approved of was "The Scottish Accident, Life, and Fidelity Insurance Company Ltd."²

¹ *The Western Ranches Ltd. v. Nelson's Trustees*, 17th March 1899, 36 S. L. R. 576.

² *The Scottish Accident Insurance Co. Ltd. Petr.*, 1896, 23 R. 586.

In an English case, the Court, instead of stipulating for a change in the name of the Company, ordered the resolution to be advertised.¹

Copy of Order confirming Resolution to be filed with Registrar.—Where the Court confirms an alteration of the Memorandum, the Act² provides for a copy thereof being delivered to the Registrar of Joint Stock Companies within fifteen days from the date of the order, under certain specified penalties. It has, however, been decided that the Court has power to extend the period for registration.

ALTERATION OF CAPITAL OF COMPANY.—The capital is the fund out of which the creditors of the Company are entitled to look for payment of their debts. The creditors give credit to that capital, give credit to the Company on the faith of the representation that the capital shall be applied only for the purposes of the business. Hence no alteration can be made on that capital, except in the manner and with the safeguards provided by Statute. The word “capital” as here used means the nominal capital of the Company, that is, the capital which the Company has power to raise under its Memorandum of Association, as distinct from issued or paid-up capital.

Increase of Capital.—A Company limited by shares may, if authorised by its Memorandum or Articles of Association as originally framed, or as altered by special resolution, increase its capital by the issue of new shares of such amount as the Company may think expedient. A Company limited by shares, and having no authority under its Memorandum or Articles of Association to create any preference between the different classes of shares, may, by special resolution, alter its Articles so as to authorise the directors to issue preference shares by way of increase of capital.³ While this is so, it is desirable to insert in the Memorandum a power authorising the directors to create preferences in the following or similar

¹ *Copper Mines Tin Plate Co.*, W. N. 1897, 20.

² Act 1890, sec. 2.

³ *Andrews v. Gas Meter Co.*, 1897, 1 Ch. 361.

terms: "To increase the capital of the Company, and to determine what preferences or priority, if any, the holders of new shares or any of them are to have over existing shareholders, or what preferences or priority, if any, holders of existing shares are to have over new shares." The clause in the Articles following upon this should be: "The Company may from time to time, by special resolution, increase the capital by the creation of new shares to such an extent as may, by such special resolution, be determined. The new shares shall be issued in such manner, and shall be of such respective amounts, as the special resolution sanctioning the creation of the same may direct, or, if no direction be given, as the Board may determine. Such increased capital may be issued in the form of ordinary shares, or preferred or guaranteed, or deferred or debenture shares, or partly in one of these and partly in another, or others; and said increased capital shall be payable in such manner and by such instalments as the special resolution sanctioning the increase may direct; and should no such direction be given by such special resolution, then as the Board shall see fit." When the capital is increased in the manner here indicated by special resolution, notice of the change must be given to the Registrar within fifteen days after the confirmation of the special resolution.¹ The notice must be given on a special form,² which requires to be stamped with a registration fee of 5s. Further, a statement² of the increase of nominal capital requires to be registered, and this statement must be stamped with a duty of 5s. for every £100 and fraction of £100 over any multiple of £100 of such increase of capital.³

REDUCTION OF CAPITAL.—Under the Companies Act of 1862 it was not competent for a Company limited by shares to reduce its capital. Such an operation would have been in

¹ Act 1862, sec. 34.

² The form may be had from Messrs. J. Oswald & Son, Register House, Edinburgh, or at the Telegraph Office, Parliament Square, Edinburgh.

³ Stamp Act 1891, sec. 112, and Finance Act, 1899, sec. 7.

contravention of one or more of the statutory conditions of the Memorandum which the Act made unalterable. The difficulty, however, was removed shortly afterwards by legislation.

By the Acts of 1867, 1877, and 1880,¹ extensive powers are conferred upon Companies on complying with the necessary formalities to reduce their capital. It has not yet been decided whether a Company can by contract deprive itself altogether of the power of reducing its capital which is conferred by the Acts; but it has been decided that a contract made on the issue of preference shares, that that class of shares shall not be liable to reduction, is valid.

The first and paramount condition to the reduction of capital is that a Company must have power in its regulations (Memorandum or Articles) as originally framed, or as altered by special resolution, to reduce its capital.

Where the regulations are silent on the subject, a Company must, if desirous to reduce its capital, first pass a special resolution altering the Articles to the effect of giving the Company power to do so, and thereafter by another special resolution follow out the steps necessary to attain the desired object. It is incompetent to have the two special resolutions running concurrently. Thus in one case, a Company, the regulations of which did not authorise a reduction of capital, passed, on the 30th October, (1) a resolution, inserting in the Articles a power to reduce its capital; and (2) a resolution for reducing the capital. Both these resolutions were confirmed at a meeting on the 16th November; and it was held that the Court could not confirm the resolution for the reduction of capital, for that a special resolution for that purpose could not be passed until after the regulations of the Company had been altered so as to make them authorise a reduction of capital. There is nothing incompetent, however, in holding the first meeting in connection with the special resolution to reduce the capital immediately after the confirmatory meeting in connection with the altering of the Articles.

¹ For which see Appendix.

Except in cases where the proposed reduction does not involve either (1) the diminution of any liability in respect of unpaid capital, or (2) the payment to any shareholder of any paid-up capital,¹ a Company, immediately after the passing of the special resolution to reduce the capital, must add as the last words in its name, until such date as the Court² may fix, the words "and reduced." In the two excepted cases above specified, when the application is made to the Court to confirm the resolution, the words "and reduced" must, unless the Court orders otherwise, be added. The practice at present is to ask the Court, when the petition is presented, to dispense with the adding of the above words until the application is finally disposed of; and in disposing of the application, the Court may, if it thinks it expedient so to do, dispense altogether with the above words.³

In ascertaining the available assets of a Company for the purpose of a reduction of capital, the amount of reserve and unappropriated profit, and the value of goodwill, are to be taken into account.⁴

How Capital may be reduced.—In the Act of 1867 there is no specification as to the way in which a Company may reduce its capital. In the Act of 1877, however, certain modes are indicated; but these do not profess to be the only means by which the desired object can be accomplished. The modes specified are—

1. To cancel any lost capital or any capital unrepresented by available assets.
2. To pay off any capital that may be in excess of the wants of the Company.
3. Cancelling issued but unpaid capital.
4. Cancelling shares which at the date of the passing of the special resolution have not been taken or agreed to be taken by any person. The Court does not require to

¹ Act 1877, sec. 4.

² For definition of Court see sec. 12 of Act of 1867.

³ Act 1877, sec. 4.

⁴ *In re Barrow Haematite Co.*, 1900, 2 Ch. 846.

confirm a reduction of capital carried out in the manner last above stated.¹

Any scheme which does not provide for uniform treatment of shareholders whose rights are similar, would be most narrowly scrutinised by the Court; and no such scheme is likely to be confirmed unless the Court is satisfied that it will work justly or equitably. But if all the shareholders were of opinion that the capital of the Company should be reduced, and that this reduction would best be effected by paying off some shareholders, and cancelling the shares held by them, the Court would confirm such a resolution.²

The Court will not confirm a special resolution of a Company which implies not only a reduction of the then present capital, but the creation in an irregular manner of new capital to be called up, with the imposition upon the shareholders of an additional liability which did not attach to them at the time of the passing of the resolution. Thus in a case where a Company, to replace capital which had been lost, sought confirmation of a resolution to reduce the capital of the Company, which was then divided into shares of £1 each fully paid, to shares of £1 each, 15s. paid, the Court refused confirmation on the ground that the resolution was not one to reduce capital, but to replace capital which had been lost. The Court have, however, confirmed a resolution where a Company proposed to return to the shareholders capital to the extent of one-tenth part "upon the footing that the amount so paid or returned, or any part thereof, may be called up again." A reduction of capital by borrowing money to pay it off has been held to be competent. Further, a reduction may be accompanied with increase of capital. The Court will in a proper case confirm a resolution for reduction of capital notwithstanding that the voting powers may be thereby affected.³

¹ Act 1877, sec. 5.

² *British and American Trust and Finance Corporation v. Cooper*, 1894, A. C. 399.

³ *In re Colman (Jas.)*, 1897, 1 Ch. 524.

Upon a reduction of the capital of a Company, it is not essential that the reduction should be made equally or rateably on all the shares, although, *primâ facie*, in the absence of any agreement to the contrary, the reduction ought to be made in that way. In cases where shares are divided into ordinary and preference, the preference shares are not exempt from reduction rateably with the ordinary, except in cases where the preference shareholders have a priority as regards capital.

In order to safeguard the rights of creditors who might be affected by any change in the capital of a Company, specific directions are given for the guidance of the Court, with the view of protecting their interests. The consent of the creditors must be procured, or their claims must be satisfied. (Act of 1867, secs. 11-14.¹) Creditors are entitled, if so advised, to appear and object to the confirmation of the resolution for reduction. When a petition is presented for the confirmation of a special resolution for the reduction of the capital of a Company, involving the diminution of liability in respect of unpaid capital and return of paid-up capital to the shareholders, the Court has no power to dispense with the settling of the list of creditors required by sec. 13 of the Act of 1867, even though there may be evidence that the Company has no debt unsatisfied.

Before the reduction is finally accomplished, the special resolution and the order of the Court must be lodged with the Registrar, in terms of sec. 15 of the Act of 1867 and sec. 4 of the Act of 1877. The order of the Court required to be registered is usually appended to a print of the petition presented for confirmation. In cases where no order of Court is necessary, a minute setting forth the particulars of the reduction must be registered.

Reduction of Capital of Company limited by Guarantee.—Where such Companies have a capital divided into shares, a reduction of the capital can, as regards Companies registered before the 1st January 1901, be effected in any manner

¹ For which see Appendix.

provided in the Companies' own regulations. The sanction of the Court is unnecessary to the alteration. As regards Companies registered on and after 1st January 1901, a different rule applies, and it would seem that such Companies can only effect a reduction of capital in the same way as Companies limited by shares.¹

Consolidation and Division of Capital into Shares of larger Amount, and Conversion of Shares into Stock.—Any Company limited by shares may, if authorised to do so by its regulations as originally framed, or as altered by special resolution, consolidate and divide its capital into shares of larger amount than its existing shares, or convert its *paid-up* shares into stock. If any change in the manner here indicated is made, notice thereof must be given to the Registrar² on a special form. The form requires to be stamped with a registration fee stamp of 5s. As to the effect of conversion of shares into stock, see Act of 1862, sec. 29.

Conversion of Stock into Shares.—Every Company limited by shares, which has in pursuance of the above provisions converted any portion of its shares into stock, may so far modify the conditions in its Memorandum of Association, if authorised to do so by its Articles as originally framed, or as altered by special resolution, as to reconvert such stock into *paid-up* shares of any denomination.³ There does not seem to be any statutory provision for giving notice of the reconversion to the Registrar.

Subdivision of Shares.—This can be effected in the manner provided in secs. 21 and 22 of the Act of 1867.⁴

¹ Act 1900, sec. 27.

² Act 1862, sec. 28.

³ Companies Act, 1900, sec. 29.

⁴ For which see Appendix.

CHAPTER XII

GENERAL POWERS OF COMPANY

PAYMENT OF PRELIMINARY EXPENSES.—Before a Company can be incorporated, or in a position to render itself liable as a party to a contract, certain legal and other expenses must of necessity be incurred. It is customary in the Memorandum of Association to take power to pay all expenses incurred in connection with the formation of the Company, and in obtaining the subscription of the share and debenture capital, and all commissions and other remunerations. Without such a provision, however, the Company is entitled to pay the costs legitimately incurred in bringing it into existence. But this does not imply that the person who has done the work has a good right of action against the Company. He could not have been employed by the Company, and his only legal claim is against his employers; for it is a fallacy to say that, because a person gets the benefit of work done for someone else, he is liable to pay the person who did the work.¹

A Company, however, usually adopts the contracts made on its behalf before incorporation, and so renders itself liable for the due implement thereof. See, further, on this point “Preliminary Agreements.”

RESERVE FUND.—It is usual to insert in the Articles of Association a provision empowering the directors before recommending any dividend (except that payable to preference

¹ *In re Rotherham Chemical Co.*, 25 Ch. D. 103. See also *Law Agent of Company*.

shareholders), to set aside out of the surplus profits of the Company, so far as belonging to the ordinary shareholders, such sum as the directors think proper as a reserve fund, to meet contingencies, or for equalising dividends, or for other reasonable expenditure connected with the business of the Company. Power is invariably given to invest the sum so set apart in such securities as the directors may select ; or in their option the same may be used in the business of the Company, the reserve fund being credited with the interest, if any, accruing on the securities in which the same is invested ; and when used in the business of the Company, a stipulation is made that the fund shall be credited with interest at 5 per cent.

A material point requires consideration, and that is whether these withdrawn profits have been subsequently capitalised, or so dealt with that they are the property of the Company instead of the property only of the ordinary shareholders, to whom they originally belonged. Carrying undrawn profits to a suspense account, or to a reserve account, does not necessarily change their character, still less their ownership ; they remain the undrawn profits of those persons to whom they belonged, dedicated, no doubt, to certain purposes and applicable to those purposes, but not otherwise altered in their character or ownership. If the purposes for which such profits are set apart fail, or if the profits are not required for such purposes, they become divisible, not as capital, but as undrawn profits. When capital and profits belong to the same persons, and in the same proportions, it becomes immaterial to distinguish the one from the other, and capitalisation for convenience may be inferred from slight evidence. But when capital and profits belong to different persons, or to the same persons in different proportions, the effect of capitalising profits is to change their ownership, and an intention to do this must be shown before conversion of profits into capital can be properly inferred. Moreover, this is a matter on which a majority cannot bind a minority, unless expressly empowered to do so by the constitution of the Company, either as originally

framed, or as subsequently modified by some authority binding on all.¹

As to right of Company to carry sum to reserve fund against wishes of deferred shareholders, see Founders' Share.²

FORFEITURE AND SURRENDER OF SHARES. — Forfeiture of shares because of a member's inability or refusal to pay calls which are due, is recognised by the Companies Acts³ and by the Articles contained in Table A. It does not involve any payment by the Company, but puts the Company in a position to place the shares elsewhere, and so get the balance of capital paid. A forfeiture presumably exonerates from future liability those who have shown themselves unable to contribute what is due from them to the capital of the Company. For calls already made the person whose shares have been forfeited remains liable. Surrender of shares no doubt stands on a different footing; but it does not involve any payment out of the funds of the Company. The acceptance of a surrender from a solvent shareholder on a tacit understanding that he was to be released from his obligation to pay the calls already made, would be undistinguishable in principle from a purchase of the shares, because it would amount to a surrender by the Company of a part of the capital which ought to be available for the payment of its debts. But if the shareholder be insolvent, and if the transaction he entered into be in good faith, it is not open to challenge. The Statutes do not prescribe any special form of surrender, and it may be assumed that a surrender must take the form of a transfer by the shareholder to the Company.

Before a Company can forfeit or accept a surrender of shares, power to do so must be contained in the regulations of the Company, either as originally framed or as altered by special resolution. Every condition precedent in the regulations must be strictly and literally complied with. A very little in-

¹ *In re Bridgewater Navigation Co. Ltd.*, 1891, 2 Ch. 317.

² *Fisher v. Black and White Publishing Co.*, 1900, 17 T. L. R. 146.

³ Act 1862, sec. 26.

accuracy is as fatal as the greatest. The Legislature has pointed out the steps which are to be taken prior to the forfeiture, and it is essential that all those steps should be strictly followed. Again, there must be properly appointed directors to declare a forfeiture of shares. The directors may exercise their power to forfeit shares after a voluntary winding up has commenced, provided they obtain the sanction of the liquidator or of the Company to their so doing.

Where a person is induced by fraud to apply for an allotment of shares, and his shares are afterwards forfeited by his failure to pay calls, he ceases to be a shareholder and becomes simply a debtor to the Company. If he has done nothing to affirm the contract he may repudiate it, and defend an action for calls on the ground of the fraud. A person in such a position is not precluded by the subsequent liquidation of the Company from pleading, in answer to a demand for payment of the calls, that he was induced to take the shares through the fraudulent misrepresentations of the Company.

Where a person has applied for and been allotted shares which are subsequently forfeited, he is liable, in the event of the Company going into liquidation within a year of the forfeiture, to be placed on the B list of contributories.¹

COMPANY CANNOT DEVOTE FUNDS TO OBJECTS OUTWITH SCOPE OF DEED OF INCORPORATION.—A Company incorporated under the Companies Acts for a special purpose cannot devote any part of its funds to objects unauthorised by the terms of its incorporation, or unconnected with the business of the Company, however desirable such an application may appear. So long as a Company acts within its powers, the Court will not readily interfere with the action of the shareholders. Even where directors exceed their own powers, but act within the powers of the Company, the Court will not interfere, as it is for the shareholders to approve or disapprove of the action of the directors.

It is always a delicate matter for the Court to interfere

¹ See Winding up of Company.

between a majority and a minority of shareholders of a going Company with respect to matters connected with the conduct of the Company's business, and as to which the shareholders have come to a resolution. The dissentient shareholders must make out an abuse of power. *Primâ facie*, the shareholders are the best judges of their own affairs, and it is only where it appears that some sinister motive has operated, or that interests other than the interests of the Company have plainly prevailed, that the Court will entertain a complaint. The test is always whether what is complained of has been done in the interests of the Company; or, to put it, perhaps, more accurately, whether the action of the majority is irreconcilable with their having proceeded upon any reasonable view of the Company's interest.¹

Where there are shareholders who have, or say they have, a right to complain of the conduct of those who are managing the affairs of the Company, the remedy is not strictly against the directors, but, through the Company, against the directors, and through the Company only and upon very obvious principles. The directors are the servants not of the individual shareholders, but of the Company, and the course therefore that any shareholder must take if he is aggrieved is to bring the matter before his fellow-shareholders, and, if they agree with him, to take action in the Company's name.² No doubt where the act complained of is *ultra vires* of the Company, as, for instance, if it involves the application of the Company's funds contrary to its constitution, any shareholder is entitled to take individual action. The reason is that such acts cannot be validated even by consent of all the shareholders. So also, if the individual shareholder, on bringing his complaint before the Company, is overborne by an interested majority, or by a majority unfairly obtained, he may have redress in one form or another by applying to the Court.

While a Company cannot do anything outwith the scope of

¹ *Cameron v. Glenmorangie Distillery Co. Ltd.*, 1896, 23 R. 1092.

² *Brown v. Stewart*, 1898, 1 F. 316.

the powers conferred in its deed of incorporation, there are certain things which a Company has an implied power to do so long as such acts are ordinarily and reasonably done in the particular business carried on by the Company, and are done for its benefit. It is impossible to specify all the implied acts which a Company may do, as these of necessity vary with the particular business carried on by the Company. To illustrate what may be done by a Company without express power to that effect in its deed of incorporation, a few cases may be referred to where the Courts have held that the acts complained of were within the implied powers of the Company; and, on the other hand, a few cases may be noted where the things done were held to be outwith the scope of such implied powers.

Acts decided to be within Power of Company.—(1) To give gratuities to its officials in consideration of services rendered or to be rendered. (2) To pay a gratuity to each person employed in a factory.¹ The opinions of the judges in this case are instructive, and they are to this effect. Where there are directors of a trading Company, those directors necessarily have incidentally the power of doing that which is ordinarily and reasonably done in every such business with a view either to getting better work from their servants or to attract customers to them. Take the following as an instance. A railway Company, or the directors of the Company, might send down all the porters at a railway station to have tea in the country at the expense of the Company. Why should they not? It is for the directors to judge, provided it is a matter which is reasonably incidental to the carrying on of the business of the Company; and a Company which always treated its employees with Draconian severity, and never allowed them an inch more than the strict letter of the bond, would soon find itself deserted—at all events, unless labour were much more easy to obtain in the market than it often is. The law does not say that there are to be no cakes and

¹ *Hampson v. Price's Patent Candle Co.*, 45 L. J. Ch. 437.

ale, but there are to be no cakes and ale except such as are required for the benefit of the Company.

(3) A resolution by a Company at a general meeting to issue to its manager unissued shares at a premium less than might have been obtained in the market, with a view of rewarding his past services and of securing his future services, was held not incompetent.¹ (4) Similarly, a resolution at a meeting of proprietors of a bank authorising the directors to pay, half-yearly, a pension for five years for the benefit of the family of a deceased officer, was held to be valid.² (5) An hotel Company may let part of its premises if it does not require the whole of them. (6) An insurance Company may pay losses which it is not legally liable to pay, but which similar offices were accustomed to pay gratuitously.³ (7) Every Company has, as an incident of its existence, the same power of compromising claims made against it as has an individual. (8) A Company having power to receive money "by way of loan, by cash-credit, debenture, deposit, or otherwise," was held entitled to grant a heritable security for the amount of a loan.⁴ (9) A Company may sue or be sued in respect of damages for slander.⁵

Acts decided to be outwith Scope of Company.—(1) To purchase its own shares to which liability attaches. As a general rule, a Company is disabled from acquiring shares in its own undertaking to which liability attaches. A transaction of this kind is not merely voidable but void, as being *ultra vires* on the part of the Company. The reason is, that by such purchase or acquisition the uncalled capital of the Company is reduced; because, in the event of the Company going into liquidation, the liability of the insolvent Company is substituted for that of a shareholder who is presumably solvent. An exception is admitted in the case where a

¹ *Cameron v. Glenmorangie Distillery Co. Ltd.*, 1896, 23 R. 1092.

² *Henderson v. Bank of Australasia*, 1888, 40 Ch. D. 170.

³ *Taunton v. Royal Insurance Co.*, 2 H. and M. 135.

⁴ *Paterson's Trs. v. Caledonian Heritable Security Co.*, 1885, 13 R. 369.

⁵ *Gordon v. British and Foreign Metaline Co.*, 1886, 14 R. 75.

shareholder, being unable to pay calls which are due, surrenders his shares; but this is only an apparent exception.¹ In the case supposed, creditors are not prejudiced, because the extinction of the obligation of a bankrupt shareholder can injure nobody. But a transfer of fully paid shares in a Company to the Company itself or its nominees, does not, in fact, diminish the capital of the Company available for distribution among its creditors, because the shares only represent a claim upon the income of the Company, and the holders of the shares are not liable to be made contributories in liquidation.² A power in the Memorandum or Articles of Association to purchase shares does not alter the legal position; but the legal difficulty may be got over, and a Company may become the proprietor of its own shares, if the transaction is carried out in the way of a reduction of capital, for then the rights of creditors and all other parties interested are protected by the Court.

(2) To accept a surrender of shares which will result in an illegal reduction of capital. It has been decided that a limited Company was entitled to accept a surrender of shares by an insolvent shareholder without reserving its right to recover unpaid calls as a fair compromise of the Company's claims against the shareholder, and that when the Company afterwards went into liquidation the liquidator was not entitled to reduce the transaction on the ground that it was *ultra vires* of the Company.³ (3) To issue shares as fully paid up for a money consideration less than their nominal value.⁴ (4) To pay dividends to the shareholders out of capital. No subterfuge, by which it is attempted to return capital to shareholders, will be countenanced by the Court.⁵ (5) To borrow money, except to the extent expressly conferred or

¹ See further on this point, *Forfeiture and Surrender of Shares*.

² *Miln & Gill v. Arizona Copper Co. Ltd.*, 1900, 37 S. L. R. 602.

³ *General Property Investment Co. v. Craig*, 1891, 18 R. 389.

⁴ *Ooregum Gold Mining Co. of India v. Roper*, 1892, A. C. 125.

⁵ *Guinness v. Land Corporation of Ireland*, 1882, 22 Ch. D. 349.

derived by reasonable implication from its charter.¹ (6) To contract itself out of the power to alter its Articles.² (7) To use the funds of the Company for the purpose of making a donation to a public object. Thus a railway Company was interdicted from subscribing a sum out of the Company's funds towards the erection of the Imperial Institute, and it was stated that the proposed subscription was not prevented from being *ultra vires* by the fact that the establishment of the Institute might benefit the Company by causing an increase of passenger traffic over their line.³

¹ *Baroness Wenlock v. Dee River Co.*, 1885, 10 App. Cases, 354.

² *Malleon v. National Insurance and Guarantee Corporation*, 1894, 1 Ch. 200.

³ *Tomkinson v. South Eastern Railway Co.*, 1887, 35 Ch. D. 675.

CHAPTER XIII

WINDING UP OF COMPANIES

THE sequestration under the Bankruptcy Acts of a Company formed and registered under the Companies Acts is incompetent.¹ The reason is that the Act of 1862 was intended to be a complete code of law applicable to the class of Companies to which it applies, and that the Legislature intended not only to make the provisions of the Act applicable to all such different Companies, but to make them applicable in such a way that the whole law of such Companies as are embraced within the operations of the Statute shall be found within the Statute itself. The only way, therefore, by which a Company can be put an end to is by the machinery of a winding up. While a Company cannot be wound up except under the special provisions in the Companies Acts, a Company may yet be made notour bankrupt,² so as to regulate the equalisation of diligences, and to enable creditors to reduce preferences.³

WHAT COMPANIES CAN BE WOUND UP. — All Companies registered under the Companies Acts may be wound up. As a Company can be registered in this country although the subscribers to the Memorandum and all the directors are foreigners residing abroad, provided it appears from the Memorandum and Articles of Association that some kind of

¹ *Standard Property Investment Co. Ltd. v. Dunblane Hydropathic Co. Ltd.*, 1884, 12 R. 328.

² Bankruptcy (Scotland) Act, 1856, secs. 4 and 8.

³ *Clarke, etc. v. Hinde, Milne, & Co.*, 1884, 12 R. 347.

management and business in this country is contemplated, the Courts here have jurisdiction to make a winding-up order, although the Company has never, in fact, transacted any business in this country.¹ But a foreign Company with only an agent here cannot be wound up by the Courts of this country.

Besides Companies registered under the Acts, the Act of 1862² contains provisions for the winding up of certain unregistered Companies.

How Companies can be wound up.—Winding up can be accomplished in one of the three following ways, viz.:—(1) by the Court; (2) voluntarily; and (3) voluntarily under the supervision of the Court. No restrictive condition in the Articles of Association of a Company can affect the statutory privileges of winding up.³

WINDING UP BY THE COURT.—By “the Court,” as regards Scotland, is meant the Court of Session in either Division thereof;⁴ and when the Court makes a winding-up or a supervision order, or at any time thereafter, it may, if it think fit, direct that all subsequent proceedings be taken before one of the permanent Lords Ordinary, and remit to him accordingly. Thereafter such Lord Ordinary is deemed to be “the Court,” and has for the purpose of the winding up all the powers of the Court of Session. The judgments of the Lord Ordinary are subject to review, and he may report to the Division of the Court any matter which may arise in the course of the winding up. A Company may be wound up by the Court in any case where (a) the Company has passed a special resolution requiring the Company to be wound up by the Court; (b) the Company does not commence its business within a year from its incorporation, or suspends its business for the space of a whole year. Mere suspension of business or the abandonment of one of the objects of a Company will not

¹ *Smyth & Co. v. Salem Flour Mills Co.*, 1887, 14 R. 441; *In re General Company for the Promotion of Land Credit*, 1870, 5 Ch. App. 363.

² Sec. 199.

³ *In re Peveril Gold Mines*, 1897, 14 T. L. R. 25.

⁴ As to power of Sheriff to act in certain cases, see Act 1886, sec. 4, and Ranking of Claims, *infra*.

suffice to bring a case under this provision. It must be shown that the Company has intentionally abandoned its business, or is unable to carry it on ;¹ (c) if default is made in filing the report required by sec. 12 of the Act of 1900, or timeously holding the first statutory meeting of the Company ;² (d) the members are reduced in number to less than seven ; (e) the Company is unable to pay its debts. A Company is deemed to be unable to pay its debts—(1) whenever a creditor to whom the Company is indebted in a sum exceeding £50 then due, has served on the Company, by leaving the same at its registered office, a demand under his hands requiring the Company to pay the sum so due, and the Company has, for the space of three weeks succeeding the service of such demand, neglected to pay such sum, or to secure or compound for the same to the reasonable satisfaction of the creditor. A creditor is not entitled to a winding-up order where the Company *bonâ fide* disputes the debt and there is no evidence of insolvency other than non-compliance with the notice served under the Act.³ It is not a good answer by a Company, against whom a petition for a winding-up order is presented at the instance of a creditor who holds certain security for his debt, to say that the apparent value of the security greatly exceeds the debt, unless it can also be shown that it is truly a marketable security for the amount of the debt.⁴ The Court is not bound to make an immediate order to wind up a Company upon a petition by a creditor whose debt is admitted and not paid, but may order the petition to stand over to enable the Company to make arrangements for the payment of its debts and the carrying on of its business, and will make such order where there is a reasonable hope of such arrangements being made ; (2) whenever in Scotland—a different rule as to this applies in reference to Companies registered in England and

¹ *Alliance Heritable Security Co. v. Heritable Property Trust Ltd.*, 1886, 14 R. 34.

² Act 1900, sec. 12 (8).

³ *Cunninghame and Others v. Walkingshaw Oil Co. Ltd.*, 1886, 14 R. 87.

⁴ *Commercial Bank of Scotland Ltd. v. Lanark Oil Co. Ltd.*, 1886, 14 R. 147.

Ireland—the *inducie* of a charge for payment on an extract decree, or extract registered bond or protest, has expired without payment being made; or (3) whenever it is proved to the satisfaction of the Court that the Company is unable to pay its debts; or (*f*) the Court is of opinion that it is just and equitable the Company should be wound up. It is impossible to state in general terms what set of circumstances must coexist before a winding-up order will be granted under this provision. The matter is one for the discretion of the Court. In the following cases a winding-up order has been granted in virtue of the power here conferred:—(1) where the business of the Company was gone and could not be resuscitated; (2) where a mine which the Company had been established to work could not be acquired; (3) where a German patent which the Company was formed to work never had any existence; (4) where a patented invention which the Company was formed to work totally failed and was entirely given up; and (5) where a complete deadlock as to the affairs of the Company had arisen. The Court will not, however, in the exercise of the discretionary power here conferred, grant a winding-up order merely because the Company is a losing concern, the directors have been guilty of misconduct, or the shareholders few and the assets small.

Application for Winding up, and who may apply.—The application is made by petition to the Court. It may be presented by the Company, by any one or more creditor or creditors, by any one or more contributory or contributories, or by all or any of these parties together or separately.¹ A condition precedent to the granting of a winding-up order is that there are assets belonging to the Company to recover. Every order on a petition operates in favour of all the creditors and contributories in the same manner as if it had been made on the joint petition of a creditor and a contributory. If the petition is presented by a contributory, the Court has a discretion as to issuing a winding-up order, and it will not in

¹ Act 1862, sec. 82.

general make an order against the wishes of the general body of shareholders. The reason is that a shareholder is bound to contribute to the extreme limit of his liability to enable the business of the Company to go on, and he cannot be heard to say that because he would rather not pay up his shares in full, the amount which he has agreed to contribute shall not be contributed to assist those who do continue. It is part of his contract to pay up so much per share so long as the Company continues, and he is bound to fulfil that contract. The mere fact that the business of the Company has been carried on at a loss is not sufficient to entitle a shareholder to a winding-up order. If a shareholder is in arrear with calls, this is not of itself an absolute bar to his petitioning for a winding-up order.¹ No contributory can present a petition unless the members of the Company are reduced to less than seven in number, or unless the shares, or some of them, in respect of which he is a contributory, either were originally allotted to him, or have been held by him and registered in his name for a period of at least six months during the eighteen months prior to the commencement of the winding up, or have devolved upon him through the death of a former holder.² The word "held," in the section of the Act here referred to, has no technical meaning, the true meaning of the word being that the name of the contributory has been on the register as the holder of shares for the period in question.³ The object of this proviso is to preclude a person from transferring his shares to another, who may desire immediately the winding up of the Company. It is not of itself an objection to the petition of a shareholder for a winding-up order that he is the holder of fully paid-up shares in the Company; but as there is no liability attaching to him in respect of his holding, the Court will not readily grant the petition, unless it is shown that there will be a substantial surplus for division among the

¹ *In re Diamond Fuel Co.*, 13 Ch. D. 400.

² Act 1867, sec. 40.

³ *In re Wala Wynaad Indian Gold Mining Co.*, 21 Ch. D. 849.

shareholders after the obligations of the Company are satisfied, or there are other circumstances justifying this course. Petitions at the instance of the holders of fully paid shares have frequently been granted.

An order to wind up a Company compulsorily will be made on the petition of a holder of a paid-up share, notwithstanding that an extraordinary resolution has been passed to wind up voluntarily. Fraud is a ground, but not the only ground, on which this power will be exercised by the Court. Thus in a case where a committee of investigation had reported in favour of proceedings against the directors of a Company to make them liable for misfeasance, the Court ordered the Company to be wound up on the petition of the holder of a paid-up share, and that although an extraordinary resolution had been passed to wind up voluntarily, and steps had been taken to dissolve the Company and destroy the books.

A creditor whose debt, in whatever way constituted, is not *bonâ fide* disputed, is entitled to have an order; but the Court may have regard to the wishes of other creditors, and is not bound to make a compulsory order if there be a voluntary liquidation in progress, or a liquidation under the supervision of the Court. A petition is competent at the instance of a debenture-holder or bond-holder whose interest is in arrear.¹ A creditor cannot, having presented a petition for winding up, sell his debt and the right to proceed with the petition,² although the assignee of a debt may present a petition. The executor of a creditor may present a petition; and in England it has been decided that the petition may be presented before probate is granted, it being sufficient if the executor has obtained probate before the hearing of the petition.³

Court may appoint a provisional Liquidator.—The Court may at any time after the presentation of the petition, and

¹ *Macdonnell's Trs. v. Oregonian Rly. Co.*, 1884, 11 R. 912.

² *In re Paris Skating Rink Co.*, L. R. 5 Ch. D. 959.

³ *In re Masonic and General Life Assurance Co.*, 32 Ch. D. 373.

before making an order for the winding up of the Company, appoint provisionally an official liquidator on the estates and effects of the Company.¹

Commencement of Winding up.—The winding up commences at the date of the presentation of the petition on which the winding-up order is subsequently pronounced.²

Effect of Order of Winding up on Share Capital of Company limited by Guarantee.—When an order has been made for the winding up of a Company limited by guarantee, and having a capital divided into shares, any share capital that may not have been called up is deemed to be assets of the Company, and to be a debt due to the Company from each member to the extent of any sums that may be unpaid on any shares held by him, and payable at such time as may be appointed by the Court.³

VOLUNTARY WINDING UP.—A Company may be wound up voluntarily whenever—(1) the period, if any, fixed for the duration of the Company by the Articles of Association expires, or whenever the event, if any, occurs, upon the occurrence of which it is provided by the Articles of Association that the Company is to be dissolved, and the Company in general meeting has passed a resolution requiring the Company to be wound up voluntarily; (2) the Company has passed a special resolution requiring the Company to be wound up voluntarily; or (3) the Company has passed an extraordinary resolution to the effect that it is satisfactorily proved that the Company cannot, by reason of its liabilities, continue its business, and that it is advisable to wind it up.⁴

It is unnecessary to show that the Company is insolvent to justify a voluntary winding up.⁵

There is a material distinction as to the mode of procedure to be adopted in the second and third cases above referred to. In the second case, a Company may be wound up voluntarily

¹ Act 1862, sec. 87.

² *Ibid.* sec. 84.

³ *Ibid.* sec. 90.

⁴ *Ibid.* sec. 129.

⁵ *In re London Flour Co.*, 1868, 19 L. T. 138.

“whenever the Company has passed a special resolution requiring the Company to be wound up voluntarily.” According to the 51st section of the Act of 1862, in order that a resolution should be a special resolution, it must be carried by a majority of three-fourths of the members of the Company present at a general meeting, “of which notice specifying the intention to propose such resolution has been duly given,” and it must also be confirmed by a majority of the members present at a subsequent general meeting, of which notice has been duly given, held at an interval of not less than a fortnight and not more than a month from the date of the first meeting. In the third case, the resolution, if carried by a three-fourths majority at a general meeting called for the purpose, does not need confirmation at a subsequent meeting; but then the resolution must be to the effect that it has been proved to the satisfaction of the meeting that the Company cannot, by reason of its liabilities, continue its business. It is not enough that the meeting resolve that the Company be wound up voluntarily. That is the way of proceeding under the second head. The meeting must positively affirm that it has been proved to its satisfaction that the Company cannot, by reason of its liabilities, continue its business, and that it is advisable to wind up the same.

The voluntary winding up of a Company is not a bar to the right of any creditor to have the same wound up by the Court, if the Court is of opinion that the rights of such creditor will be prejudiced by a voluntary winding up.¹

Commencement of Winding up.—The winding up commences at the date of the confirmatory resolution, and thereafter the Company ceases to carry on business, except in so far as may be required for the beneficial winding up thereof. A notice of the resolution, as respects Companies registered in Scotland, must be inserted in the *Edinburgh Gazette*.²

The effect of the winding up on the share capital of Companies limited by guarantee is the same as in a winding up

¹ Act 1862, sec. 145.

² *Ibid.* sec. 132.

by the order of the Court, except as to the provisions in regard to the equalisation of diligence under the Act of 1886.

VOLUNTARY WINDING UP UNDER THE SUPERVISION OF THE COURT.—In the case of a voluntary winding up, creditors are not debarred from proceeding against the Company ; and where there is a chance of preferences being granted, recourse is had to have the winding up continued under the supervision of the Court.¹ The petition may be presented either by the Company or by contributories or creditors ; and upon such petition being presented the Court has full power to order the voluntary winding up to be continued subject to the supervision of the Court, upon such terms and subject to such conditions as the Court thinks just.²

It is no good answer to a petition to place a voluntary winding up under the supervision of the Court, that the resolution to wind up was the result of a fraudulent conspiracy on the part of some of the shareholders to obtain possession of the business of the Company for their own behoof, or that the Company is perfectly solvent.³ Again, it is incompetent and irrelevant for a creditor, when the supervision order is craved, to oppose it, and to petition for a recall of the resolution to wind up, on the ground that his rights will thereby be prejudiced.⁴

The Court will not in general, at the instance of a contributory, interfere with a voluntary winding up, by ordering it to continue under supervision, unless there has been fraud or undue influence in passing the resolution.⁵ Where the resolution to wind up voluntarily has been regularly passed the Court will not, on the application of a fully paid-up shareholder, interfere with it, by ordering a compulsory winding up,

¹ *Benhar Coal Co. v. Turnbull*, 1883, 10 R. 558, and cases there cited.

² Act 1862, sec. 147 *et seq.*

³ *Monkland Iron Co. v. Dun*, 1886, 14 R. 242.

⁴ *Lawson Seed and Nursery Co. Ltd. v. Peter Lawson & Son Ltd.*, 1886, 14 R. 154.

⁵ *In re Beaujolais Wine Co.*, 1867, L. R. 3 Ch. 15.

or a winding up under supervision, against the wishes of nearly all the shareholders.¹

A supervision order may be superseded by an order directing the Company to be wound up compulsorily. In cases of winding up under the supervision of the Court, all the advantages to be derived from a compulsory winding up are secured, while the liquidators and the Company are free to conduct the winding up without applying to the Court for its sanction.

APPOINTMENT OF LIQUIDATOR.—*Difference between a Trustee in a Sequestration and a Liquidator.*—The trustee in a sequestration is invested in the entire estate of the bankrupt, and the bankrupt is entirely divested. Liquidators, on the other hand, are not vested in the estate of the Company. The estate remains in the Company itself, and the liquidators are merely the administrators of it. But they are administrators for the special purpose of dividing the estate among the creditors of the Company, and, if there be any balance, of dividing it among the contributories. If the estate is insolvent, then the sole purpose for which the liquidators administer is to distribute it amongst the various creditors of the Company according to their rights as creditors.² Again, a trustee in a sequestration sues in his own name as trustee, whereas a liquidator must sue in name of the Company.

A liquidator is not, strictly speaking, a trustee, either for the creditors or the contributories of a Company in liquidation, his position being that of agent of the Company. Hence in the absence of fraud, *mala fides*, or personal misconduct, an action for damages will not lie against a liquidator at the instance either of a creditor or contributory for delay in paying the creditor's debt or in handing over to the contributory his proportion of the surplus assets of the Company.³

¹ *In re Irrigation Co. of France*, 1871, L. R. 6 Ch. 176.

² *Clark v. West Calder Oil Co. Ltd.*, 1882, 9 R. 1017; *Gray's Trs. v. Benhar Coal Co. Ltd.*, 1881, 9 R. 225.

³ *Knowles v. Scott*, 1891, 1 Ch. 717.

APPOINTMENT OF OFFICIAL LIQUIDATOR.—The Court appoints the official liquidator or liquidators. If more persons than one are appointed, the Court declares whether any act required or authorised to be done by the official liquidator is to be done by all or any one or more of such persons.¹

When a petition is presented to the Court for the winding up of a Company, the name of the proposed liquidator is stated in the petition. Any objection to the person so proposed should be stated by counsel for the objectors verbally without lodging answers.² While a person may be named in the petition as the proposed liquidator, the Court is not bound to appoint him. When there is a competition for the office, the practice of the Court is to appoint a neutral person. It may be for the interest of all concerned that an official of the Company should be appointed, but considerations such as these are for the Court to determine. It has been decided that the mere fact that the secretary, while the Company was a going concern, failed to keep a proper register of mortgages, was not of itself a bar to his appointment as liquidator.

IN VOLUNTARY WINDING UP.—The Company in general meeting appoints such persons or person as it thinks fit to be liquidators or liquidator.³

Where the winding up is agreed to by special resolution, the liquidator should not be appointed until after the resolution has been confirmed. Where the winding up is agreed to by extraordinary resolution, the appointment of a liquidator is only competent after the resolution has been adopted. The liquidator may, however, be appointed at the same meeting, in the first case after the resolution is confirmed, and in the second case after the adoption of the resolution.⁴

Where a confirmatory meeting is necessary to any resolution to wind up voluntarily, it is competent for any liqui-

¹ Act 1862, sec. 92.

² *Hume v. Directors of Highland Peat Fuel Co.*, 1876, 3 R. 881.

³ Act 1862, sec. 133 (3).

⁴ *In re Indian Zedone Co.*, 1884, 32 W. R. 481; *In re Welsh Flannel and Tweed Co.*, 1875, L. R. 20 Eq. 360.

dator to be appointed at this meeting although he is not named in the notice calling the meeting, and notwithstanding the fact that in the notice a different person is named as the proposed liquidator.¹ A Company may by an extraordinary resolution delegate to its creditors or to any committee of its creditors the power of appointing liquidators or any of them.² If from any cause whatever there is no liquidator acting, the Court may, on the application of a contributory, appoint a liquidator or liquidators.³

Joint Liquidators.—When liquidators are appointed to act “jointly,” one of them cannot, unless directions to the contrary are given by the resolutions, act by himself. This was decided in a case where a Company resolved to wind up voluntarily, and appointed two liquidators, who entered into a valid agreement for the sale of the assets of the Company. Part of such assets consisted of a debt secured by a legal mortgage, and a proper legal assignment of the mortgage security was prepared. One of the liquidators died before the seal of the Company was affixed to the assignment, and it was decided that the surviving liquidator had no power to affix the seal of the Company. In the case under consideration a new liquidator had to be appointed before the transaction could be carried out. The shareholders, however, may determine when appointing liquidators that one or more of them may exercise the powers of the liquidators. In default of such determination and when several liquidators are appointed, two at least must act jointly.⁴

Position of Directors on Appointment of Liquidator in voluntary Winding up.—Upon the appointment of a liquidator in a voluntary winding up all the powers of the directors cease, except in so far as the Company in general meeting or the liquidators may sanction the continuance of such powers; as, for instance, where the shareholders sanctioned the exercise

¹ *In re The French Tubeless Tyre Co. Ltd.*, 1900, A. C.

² Act 1862, sec. 135.

³ *Ibid.*, sec. 141.

⁴ *Ibid.* sec. 133, sub-sec. 6.

by the directors of the power of enforcing calls, and selling, transferring, and forfeiting shares contained in the Articles of Association.¹

WINDING UP UNDER SUPERVISION OF COURT.—Where any order is made by the Court for a winding up subject to the supervision of the Court, the Court may in such order, or in any subsequent order, appoint any additional liquidator or liquidators.² It is not proper, in a petition for placing a winding up under the supervision of the Court, to pray for the confirmation of the appointment of a liquidator.³

POWER OF COURT TO REMOVE LIQUIDATOR.—The Court has power, “on due cause shown,” to remove a liquidator and appoint another in his place, and that whether the liquidation was ordered by the Court, is voluntary, or under the supervision of the Court.⁴ This jurisdiction is not exercised in the same way as if the power had been for the Court to remove a liquidator if the Court should think fit. Some unfitness in the liquidator must be shown in order to justify his removal, and the removing him is not a matter of purely judicial discretion. Where, however, the Court is satisfied that it is for the general advantage of those interested in the assets of the Company that a liquidator should be removed, it has power to remove him and appoint a new one.⁵ In the following cases the Court has removed a liquidator:—(1) Where he was the liquidator of another Company whose interests conflicted with that of the Company in connection with which his removal was desired. (2) Where he insisted upon proceeding with an action against the wishes of the creditors where the assets were deficient. But the Court has refused to remove a liquidator (1) merely because he was a shareholder and had at one time been a director of the Company; and (2) where he had an interest in a syndicate which was buying the

¹ *In re Fairbairn Engineering Co.*, 1893, 3 Ch. 450.

² Act 1862, sec. 150.

³ *Monkland Iron Co. v. Dun*, 1886, 14 R. 242.

⁴ Act 1862, secs. 93 and 141.

⁵ *In re Adam Eyton Ltd.*, L. R. 36 Ch. D. 299.

liquidating Company's property, there being no evidence that he had abused his position.

REMUNERATION OF LIQUIDATORS.—*Winding up by or under the Supervision of the Court.*—In these cases the Court fixes the salary or remuneration of the liquidator by way of percentage or otherwise as the Court may direct. Where there are more liquidators than one, the division of the remuneration is made by the Court.¹ In cases where the assets are insufficient to meet the liabilities, the Court may make an order as to the payment out of the estate of the Company of the costs, charges, and expenses incurred, in such order of priority as the Court thinks just.²

Voluntary Liquidation.—The Company in general meeting may fix the remuneration to be paid to the liquidators or liquidator;³ and such remuneration is, along with the costs, charges, and expenses properly incurred in the winding up, paid out of the assets of the Company in priority to all other claims.⁴

No Remuneration can be allowed to Committee of Advice.—When in a liquidation a committee of advice is appointed to act along with the liquidator, no remuneration can be allowed to them out of the liquidation assets for discharging their duties.⁵

POWERS OF LIQUIDATOR.—The powers of an official liquidator will be found in sec. 95 of the Act of 1862, and these powers he is required to exercise with the sanction of the Court; but the Court may provide by any order that the official liquidator may exercise any of the powers without the sanction or intervention of the Court.

In a voluntary winding up the liquidator can, without the sanction of the Court, exercise all the powers given to an official liquidator.⁶ Where a voluntary winding up is placed under the supervision of the Court, the liquidator may, subject

¹ Act 1862, secs. 93 and 151.

² *Ibid.* sec. 110.

³ *Ibid.* sec. 133.

⁴ *Ibid.* sec. 144.

⁵ *Brewis (Liquidator of Scottish Heritages Co. Ltd.) Petr.*, 1899, 37 S. L. R. 669.

⁶ Act 1862, sec. 133 (7).

to any restrictions imposed upon him, exercise all the powers without the sanction or intervention of the Court as he could have done if the Company was being wound up altogether voluntarily.¹

Power to carry on Business of Company.—In the 95th section of the Act of 1862 the official liquidator has, with the sanction of the Court, power to carry on the business of the Company so far as may be necessary for the beneficial winding up of the same. It has been decided that the word “necessary” as there used means that it must not be merely beneficial but something more, though the necessity must be determined by the Court, having regard to all the circumstances of the case. Hence, in a case where the object of a proposed business contract was to facilitate the reconstruction of the Company, it was decided that the Court had no jurisdiction to sanction the contract.² Again, power to postpone the realisation of the property of the Company in the hope that the assets might increase in value, has been refused.³

Sale of Assets by Liquidator.—The liquidator has full powers conferred on him for the sale of the assets of the Company. He may dispose of the same by public auction or private contract. He may dispose of the whole assets to any person or Company, or he may sell the same in parcels.⁴ There is in the 95th section of the Act no limit whatever upon what can be sold. Thus a liquidator, with the sanction of the Court, sold in the most general terms all the estate, property, and effects of the Company which he had power to dispose of. After the purchase price had been paid the liquidator brought forward claims against some of the directors, alleging that they had improvidently sold property of the Company at an under value, and seeking to make them liable for the loss. The existence of these claims was

¹ Act 1862, sec. 151.

² *In re Wreck Recovery and Salvage Co.*, 1880, 15 Ch. D. 353.

³ *Liquidator of Burntisland Oil Co. Ltd. v. Dawson*, 1892, 20 R. 180.

⁴ Act 1862, sec. 95.

not known when the sale was made, but the Court decided that the purchaser was entitled to any benefit arising out of them.

Power of Liquidator to compromise Claims.—The liquidator has, under certain conditions, power to compromise claims with debtors, creditors, and contributories of the Company.¹ Where the winding up is by or under the supervision of the Court, the liquidator must get the sanction of the Court to the compromise. Where the liquidation is a voluntary one, the Company must by an extraordinary resolution sanction the compromise.

Where the compromise is with a contributory, such an arrangement, on the one hand, contemplates a complete discharge of the contributory so as to put an end to all connection between him and the Company and its liquidator; and, on the other hand, there is to be an entire surrender of all claims competent to the contributory against the Company and its surplus assets.²

The Court has no power to compel a liquidator to accept a compromise of which he does not approve.

Effect of Liquidation on Contracts made by Company.—The mere fact that a Company has gone into liquidation does not of itself cancel contracts made by the Company. The liquidator has the option of completing the contract, but in such a case there is a risk that he may render himself personally liable for the due implement of contracts adopted by him. Such a liability is of necessity a question largely depending upon fact. When the liquidator does not adopt the contract, and it is not fulfilled on behalf of the Company, the person who has suffered damage thereby may rank in the liquidation for the amount of the loss sustained.

Contracts to supply Goods to Company.—Such contracts are binding on the Company during its life, and are equally binding after its dissolution, in this sense that the contracting

¹ Act 1862, secs. 159 and 160.

² *Liquidators of City of Glasgow Bank*, 1880, 8 R. 135.

parties can sue the Company for damages for any loss sustained for non-acceptance and non-payment in full of the price of the goods after liquidation.

*Effect of Liquidation on Contracts with Servants of Company.*¹

—A winding-up order or a resolution to wind up constitutes notice of discharge to all the servants of a Company in liquidation. The effect of this notice is to entitle the servants to leave the service at once and to claim damages as for wrongful dismissal as on the day on which the liquidation commences. For such damages they will only receive the same dividend as other creditors.

The liquidator and the servants may agree to continue the contract of service; but such continuance is to all intents and purposes a fresh contract, for the due implement of which the liquidator is responsible.

Interest on Debts due by Company.—Where interest is exigible on a debt due by the Company, interest stops running from the date of the commencement of the winding up; but this does not prejudice the right of the creditor to interest subsequent to that date should there be surplus assets.

Power of Liquidator, or Contributory, or Creditor in voluntary winding up to apply to Court.—The liquidator, or any contributory, or creditor, in a voluntary winding up, is entitled to apply to the Court to determine any question fairly arising in the matter of such winding up.² In virtue of this provision application has been made to the Court to settle disputes as to the compromise of a claim, to determine the rights of different classes of shareholders to surplus assets, to proceeds against directors for misfeasance, and for an examination and production of documents. It forms no part of the duty of a liquidator to go to the Court and ask a ruling as to whether or not a certain person should be placed on the list of contributories; the liquidator should exercise his own judgment in

¹ As to preference for wages due, see *Preferential Claims*.

² Act 1862, sec. 138, and Act 1900, sec. 25.

the matter, and let the person aggrieved take what action he thinks best.

The right of applying to the Court was only extended to creditors by the Act of 1900. Prior to that Act a creditor could not himself petition or compel the liquidator to make application to the Court to settle any dispute between him and the liquidator. The only remedy competent to a dissatisfied creditor was to raise an action to enforce his claim, and on obtaining decree to proceed either for a supervision order or a compulsory winding up.

Personal Liability of Liquidator for Expenses of Action raised by him.—When the liquidator unsuccessfully pursues an action he may be found personally liable in expenses, whether he can reimburse himself out of the estate or not. This was decided in a case where the official liquidator was found liable in expenses to persons who had successfully resisted being placed on the list of contributories, although the assets of the Company were admittedly insufficient to meet these expenses. It is, however, probable that if the decree is merely against the liquidator “as liquidator,” this would not imply a personal liability to pay expenses.¹

LIST OF CONTRIBUTORIES TO BE MADE UP.²—As soon as may be after the commencement of the winding up, it is the duty of the liquidator to prepare a list of contributories. The definition of a contributory will be found in sec. 23 of the Act of 1862. Holders of fully paid-up shares are not put on the list of contributories, for the reason that no payments in respect of the shares are exigible from them. Where a transfer in favour of two persons in liferent and fee respectively is registered, both are contributories, and liable as such in a liquidation. Again, the following, among others, have been held to be contributories, namely, a pupil, a minor, a married woman, and a participating policy-holder. With regard to the position of trustees and executors, their

¹ *Craig v. Hogg*, 1896, 24 R. 6.

² As to enforcement of calls against contributories, see p. 117.

legal liability is now well defined, and it is this, that they are personally liable for calls on shares of which they are the registered proprietors. Where their own estate is insufficient to meet the calls, the liquidator is entitled to compel them to resort to the trust estate to make good the deficiency.

In a judicial winding up the list is settled by the Court, in a voluntary winding up by the liquidator, and in a winding up under the supervision of the Court it is prepared by the liquidator and sanctioned by the Court. The list first made up and settled is known as the "A list," and contains the names of those persons who are contributories in their own right, and persons who are contributories as being representatives of and liable for the debts of others.¹

In a winding up by or under the supervision of the Court, notice is sent to each shareholder that the liquidator proposes to put his name on the list of contributors in respect of certain shares. It is otherwise in the case of a voluntary winding up. There no notice need be sent, and it is no defence to a demand for payment of a call that the contributory did not know his name had been placed on the list of contributories.

In the event of the money realised from the calls made on the persons named in the "A list" being insufficient to meet the debts of the Company a second list is made up, and it is known as the "B list."

The "B list" consists of those persons who have ceased to be members of the Company within the period of one year from the date of the commencement of the winding up in respect of shares which were liable in payment of calls.

Before the "B list" can be settled the following conditions must be satisfied:²—(1) there must be debts outstanding and due by the Company at the date of the winding up which were contracted prior to the date of such persons ceasing to be members of the Company, including any debt

¹ Act 1862, sec. 99.

² *Ibid.* sec. 38.

that may have been contracted before they became members of the Company; and (2) the persons on the "A list" must be unable to meet their liabilities on the shares standing registered in their names. In the case of Companies limited by shares or by guarantee, no past member is liable beyond the amount unpaid on his shares or under his guarantee.

When the "B" contributories are called upon, the liquidator may apply the sums received from them in payment of the general debts of the Company, irrespective of the time when such debts were incurred, as it has been decided that the amounts received from the past members are not to be used exclusively among the old creditors in respect of whose debts the contributories named in the "B list" are called upon, but form part of the general assets for payment of the whole debts of the Company.

Recovery of Calls by Liquidator, see Calls on Shareholders.

POWER OF COURT IN CONNECTION WITH THE REALISATION OF ESTATE.—The main object of a winding up is to convert into money the assets of the Company, and to this end extensive powers are conferred upon the Court for the purpose of obtaining information as to the estate and effects of the Company.¹ Thus the Court has the power of summoning any person to appear in Court, whether connected with the Company or not, who may be deemed capable of giving information tending to further the beneficial winding up of the Company. If the persons who have the desired information decline to assist the liquidator in his endeavours to recover the estate, then the usual course is for the liquidator to make an application to the Court for an order to compel the attendance of such witnesses, scheduling to the petition the names of the persons proposed to be examined. Any person so summoned has no *locus standi* to appeal against the order directing him to attend for examination.

When the liquidator does not make the application, some other person, a contributory or alleged contributory, may

¹ Act 1862, sec. 115.

petition; particularly is this course followed when the liquidator is himself implicated.

Before an order will be granted it must be shown that the information is for the purpose of the winding up, or for the benefit of the Company or the estate. Thus an application for an order was refused to a contributory who desired the information to be used in the prosecution of an action by him against the Company and against the directors.

When the Court directs that certain persons are to be examined, the person appointed to take the evidence has no discretion as to whether or not the public are to be admitted to the examination. If the person to be examined desires the public to be excluded, the commissioner must comply with the request. The parties to the case, their counsel, solicitors, or agents, are, however, entitled to be present.

The witness is entitled to the ordinary expenses for his attendance, but not to fees paid to counsel or agent whom he may employ to be present, at the examination, on his behalf.

In Winding up by Court, Injunction may be granted.—The Court may, at any time after the presentation of a petition for winding up a Company, and before making an order for winding up the Company, upon the application of the Company, or of any creditor or contributory of the Company, restrain further proceedings in any action, suit, or proceedings against the Company upon such terms as the Court thinks fit.¹

Actions to be stayed after Order of Court for Winding up.—When an order has been made for winding up a Company by the Court, no suit, action, or other proceeding can be proceeded with or commenced against the Company except with the leave of and subject to such terms as the Court may impose.²

The Court has no power to stay proceedings by creditors

¹ Act 1862, sec. 85.

² *Ibid.* sec. 87.

against a Company which is being wound up voluntarily.¹ Even an arrangement between a Company in course of being wound up voluntarily and three-fourths of its creditors under sec. 136 of the Act of 1862, bearing "that the rights of all parties under the voluntary liquidation should be settled on the same footing as if there had been a winding up by or subject to the supervision of the Court," is not competent or effectual. Hence it has been decided, in conformity with *Sdeuard v. Gardner*,² that the winding up being voluntary, a petition by the liquidator to restrain the diligence of a creditor falls to be refused.³ When in a voluntary winding up there are creditors pursuing separate diligences against the Company for their own benefit, and it is desired to stay such actions, the proper course to adopt is to apply to the Court to have the winding up continued under the supervision of the Court.⁴

Effect of Diligence against Company within Sixty Days of Winding up by or subject to the Supervision of the Court.—See as to this sec. 3 of the Act of 1886. The section referred to does not apply to a Company being wound up voluntarily.

CLAIMS OF CREDITORS.—One of the objects of the winding-up provisions of the Companies Acts is to put all the unsecured creditors having claims against the Company subsisting at the commencement of the winding up upon an equality, and to pay them *pari passu*.⁵ All debts payable on a contingency, and all claims against the Company, present or future, liquid or illiquid, are admissible; a just estimate being made so far as possible of the value of all such debts or claims as may be subject to any contingency, or sound only in damage or for some other reason, do not bear a certain value.⁶ A creditor may lodge his claim at any time before the final distribution of the assets so long as he does not disturb any dividend

¹ *Sdeuard v. Gardner*, 1876, 3 R. 577.

² *Supra*.

³ *Clark v. Wilson*, 1878, 5 R. 367.

⁴ *Gardner v. Hughes*, 1883, 10 R. 1138.

⁵ *In re Oak Pits Colliery Co.*, 1882, 21 Ch. D. 322.

⁶ Act 1862, sec. 158. See also p. 186.

already paid.¹ From the date of the commencement of the winding up prescription does not run on a debt due by the Company.

Effect of Dispositions granted after the Commencement of the Winding up.—Where any Company is being wound up by the Court, or subject to the supervision of the Court, all dispositions of the property and effects of the Company made between the commencement of the winding up and the order for winding up are, unless the Court otherwise orders, void.²

Fraudulent Preference.—Any undue or fraudulent preference granted by or against a Company being wound up is invalid.³

*Preferential Claims.*⁴—In the distribution of the assets of any Company being wound up, there are to be paid in priority to all other debts the following :—Crown debts, and

(a) All parochial or other local rates due from the Company at the commencement of the winding up, and having become due and payable within twelve months next before that time, and all assessed taxes, land tax, property or income tax, assessed on the Company up to the fifth day of April next before the date of the commencement of winding up, and not exceeding in the whole one year's assessment.

(b) All wages or salary of any clerk or servant in respect of services rendered to the Company during four months before the date of the commencement of the winding up, not exceeding £50. It has been decided that a managing director⁵ or a secretary⁶ is not a “clerk or servant,” and hence not entitled to a preference for salary due to him. The mere designating a person, as say secretary, will not be sufficient to justify the denial of a preference, if he is merely a clerk.

(c) All wages of any labourer or workman, not exceeding £25, whether payable for time or for piece-work in respect of services rendered to the Company during two months before

¹ *In re General Rolling Stock Co.*, 1872, L. R. 7 Ch. App. 646.

² Act 1862, sec. 153.

³ *Ibid.* sec. 164.

⁴ As to priority of expenses of liquidation, see *Remuneration of Liquidator*.

⁵ *In re The Newspaper Proprietary Syndicate Ltd.*, 1900, 16 T. L. R. 452.

⁶ *Clyde Football, etc. Co. Ltd.*, 1901, 8 S. L. T. 328.

the date of the commencement of the winding up. Provided that where any labourer in husbandry has entered into a contract for the payment of a portion of his wages in a lump sum at the end of the year of hiring, he shall have priority in respect of the whole of such sum or a part thereof as the Court may decide to be due under the contract-proportionate to the time of service up to the date of the commencement of the winding up.¹

The foregoing debts rank equally among themselves, and are paid in full, unless the assets of the Company are insufficient to meet them, in which case they shall abate in equal portions among themselves.

Subject to the retention of such sums as may be necessary for the costs of administration or otherwise, the foregoing debts are discharged forthwith so far as the assets of the Company are sufficient to meet them.

Landlord's Preference for Rent.—The proprietor of urban subjects leased by a Company is entitled to a preference over the effects belonging to the Company in the subjects leased for the current year's rent. In leases of mines or quarries it is settled that the produce is subject to hypothec, and it is probable, though not definitely decided, that a similar hypothec over the machinery and implements would be recognised. By the Hypothec Abolition (Scotland) Act, 1880, the hypothec of a landlord for the rent of land, including the rent of any buildings thereon let for agriculture or pasture, and exceeding two acres in extent, was abolished as from 4th November 1881, with an exception in the case of rent due under any lease, bargain, or writing current at that date.

When the Company is in liquidation, it would seem that before the proprietor could proceed with a sequestration for rent, he would require under sec. 87 of the Act of 1862 to get the sanction of the Court to his so doing.²

¹ Preferential Payments in Bankruptcy Act, 1888, sec. 1.

² *Wanzer Ltd.*, 1891, 1 Ch. 305; *The Holmes Oil Co. in Liquidation*, Feb. 1901, 8 S. L. T. 360.

RANKING OF CLAIMS.—In the winding up of any Company whose registered office is in Scotland, the general and special rules in regard to the voting and ranking for payment of dividends provided by the Bankruptcy (Scotland) Act, 1856,¹ or any other rules in regard thereto which may be in force for the time being in the sequestration of the estates of bankrupts in Scotland, shall, so far as consistent with the tenor of the Companies Acts, apply to creditors of Companies voting in matters relating to the winding up, and ranking for payment of dividends. For this purpose, sequestration is taken to mean liquidation, trustee to mean liquidator, and Sheriff to mean the Court.²

The general rules with regard to ranking in bankruptcies referred to above may be thus summarised :—

To entitle a creditor to draw a dividend, he must lodge in the sequestration process, or at a meeting of creditors, or in the hands of the trustee, an oath or affirmation, and produce such accounts and vouchers as are necessary to prove the debt therein referred to. The creditor must produce such evidence as would be sufficient to prove his debt in an ordinary action for the recovery thereof. Where a creditor claims a preference for the whole or part of his debt, not only must satisfactory evidence in support of his claim be produced, but also of the creditor's right to the preference.³ If the oath or vouchers of a creditor's claim be lost or destroyed by fire while in the hands of the trustee, the creditor will still be entitled to draw his dividend.

Where a creditor is not in possession of such accounts and vouchers as are necessary to prove his claim at the time when it requires to be lodged with a view to the participation in a dividend, he must state in his oath the cause of their non-production, and in whose hands, to the best of his knowledge, they are. An oath so made entitles the creditor to have a dividend set apart for him till a reasonable time be afforded for

¹ Secs. 49–66.

² Act 1886, sec. 4.

³ *Walker v. Hunter*, 1853, 16 D. 226.

their production, or for otherwise establishing his debt according to law.¹

A creditor who has a claim or debt due to him at the date of sequestration is entitled to vote and rank for the accumulated sum of principal and interest up to that date, but not for any interest accruing thereafter. If the debt is not payable till after the date of sequestration, the creditor can only vote and rank for it after deduction of the interest from the date of sequestration till the due date of payment. He must further deduct any discount beyond legal interest to which his claim is liable by the usage of trade applicable to it. If, however, there is any residue of the estate after discharging the debts ranked, the creditors are entitled to claim out of such residue the full amount of the interest on their debts in terms of law. In the absence of agreement to the contrary, interest is calculated at the rate of 5 per cent.

Deduction of Securities for Ranking.—To enable a creditor who holds a security over any part of the bankrupt's estate (which is defined to include securities, heritable or moveable, and rights of lien, retention, or preference, and conveyances thereof, or any part thereof²) to be ranked in order to draw a dividend he must on oath put a specified value on such security, deduct the same from his debt, and specify the balance. Upon the amount of such balance, and no more, he is entitled to be ranked for and to receive a dividend, without prejudice to the amount of his debt in other respects.³ The security requiring to be deducted must, at the date of the sequestration, be part of the estate of the bankrupt; the reason being that the creditor, by virtue of his security, has appropriated a part of the estate which, but for the security, would be divisible amongst the general body of creditors. The date of sequestration is alone looked to in determining what securities require to be deducted. Thus it has been held, that where a person

¹ Bankruptcy Act, sec. 50; *Taylor v. Drummond*, 1848, 10 D. 335; *Liston v. Macintosh*, 1853, 15 D. 923.

² Bankruptcy Act, sec. 4.

³ *Ibid.* sec. 65.

who had granted a bond and disposition in security over his heritable property, subsequently sold it, and thereafter became bankrupt, the bondholder was entitled to rank on the grantor's estate for the full sum in the bond, without deducting the value of the security, on the ground that at the date of the sequestration the burdened subjects did not form part of the bankrupt estate.¹ Securities received from parties independent of the bankrupt do not require to be deducted. For the information of the trustee all securities held are stated in the affidavit. It is only in the case where a person claims as an ordinary creditor that he requires to value and deduct his security. Where he claims for a preference only, such as that obtained by an arrestment of the bankrupt's funds, no valuation is necessary.²

Co-obligants.—In claims for ranking, where a creditor holds an obligant bound with, but liable in relief to, the bankrupt, he does not require to value and deduct the obligation of such party in ranking upon the bankrupt's estate. The creditor is entitled to rank, and draw a dividend, for the full sum due to him. Where the creditor holds several obligants bound for the same debt, and they all become bankrupt, he is entitled to rank on the whole estates for the full sum due to him, to the effect of receiving 20s. in the £1, but no more, on the total amount of his claim, deducting only payments or recoveries made before bankruptcy, but not payments or recoveries made after that date, except the produce or value of a security over the estate of the bankrupt, held by the creditor before bankruptcy. Thus, in claiming on the bankrupt estate of one obligant, the creditor must deduct the amount of a dividend previously received from the sequestrated estate of another obligant.

Bills.—Where a creditor claims on a number of bills held by him, the surplus on one bill cannot be applied in relief of the deficit on another.

Double Ranking.—It is a general rule of bankruptcy law

¹ *University of Glasgow v. Yvill's Tr.*, 1882, 9 R. 643.

² *Brown v. Blaikie*, 1849, 11 D. 474.

that the same debt cannot be twice ranked for on the same estate, either by the original creditor or anyone claiming through him. Thus, if a creditor claim upon the principal debtor's estate, a cautioner (as, for example, in an ordinary bond of caution, guarantee, etc.), who may have paid the difference between the creditor's ranking and the amount guaranteed, cannot also rank on the principal debtor's estate for the sum so paid by him.¹

Re-valuation of Securities.—When a creditor has valued and deducted a security held by him and has ranked for the balance, he is not thereby precluded from re-valuing the security in claiming for a second dividend; but he is not entitled to an equalising dividend in respect of the difference.²

Assignment of Securities to Trustee.—As a check upon undervaluation, the trustee, with consent of the commissioners, is entitled, at the expense of the estate, and on payment out of the common fund of the value specified by the creditor, without the addition of 20 per cent. as in the case of voting, to a conveyance or assignment of any security over the bankrupt's estate held by a creditor, or to reserve to the creditor the full benefit of such security.³ While there is no statutory limitation of the time within which a trustee may exercise his right, he must do so within a reasonable time. There is no statutory prohibition against a creditor who holds a security realising and making it available for payment of his debt. The creditor is not bound to give notice to the trustee of his intention to realise his security.⁴ Whether the trustee takes over the security or not, the creditor is entitled to a dividend on the balance of his debt.

Claims depending on a Contingency.—When the claim of a creditor depends upon a contingency, which is unascertained at the date of lodging his claim, he is not entitled to draw

¹ *Harvie's Trs. v. Bank of Scotland*, 1885, 12 R. 1141.

² *Commercial Bank of Scotland v. Speedie's Trs.*, 1885, 13 R. 257.

³ Bankruptcy Act, sec. 65; *Hunter v. Slack*, 1860, 22 D. 1166.

⁴ *Henderson's Tr. v. Auld & Guild*, 1872, 10 M. 946.

a dividend in respect of such contingent debt. He may, however, apply to the trustee, or to the Sheriff, if the trustee has not been elected, to put a value on such debt, and the trustee or the Sheriff (as the case may be) fixes the value thereof as at the date of such valuation. On such value being fixed the creditor is entitled to draw dividends in respect of such value and no more. If the contingency have happened before the debt has been valued, the creditor may draw dividends in respect of the amount of the debt; but his doing so will not be allowed to disturb any former dividends allotted to other creditors. When such application is made to the Sheriff or trustee, notice thereof must be given to the bankrupt and petitioning or concurring creditor. The judgment of the Sheriff or trustee is subject to review, and any creditor who has claimed on the estate may appeal and be heard on any appeal.¹ Where the contingency of a debt is incapable of present valuation, it would seem that the trustee's duty is to lay aside a sum sufficient to provide a dividend for the debt until the issue of the contingency.²

Court may exclude Creditors not producing their Claims within certain Time.—The Court in a compulsory winding up may fix a certain day or days on or within which creditors of the Company are to prove their debts, or to be excluded from the benefit of any distribution made before such debts are proved.³ The liquidator in a voluntary winding up, or in a winding up under the supervision of the Court, can similarly act.⁴

Disposal of surplus Assets.—When in a winding up there remain in the hands of the liquidator, after satisfying all the debts and obligations of the Company and the expenses of the winding up, surplus assets, the distribution of such assets depends upon circumstances. When in the Memorandum and Articles of Association of a Company special provision is

¹ Bankruptcy Act, sec. 53.

² *Mackenzie v. Macpherson*, 1855, 17 D. 751.

³ Act 1862, sec. 107.

⁴ *Ibid.* secs. 133, 151. .

made for the manner in which such assets are to be disposed of, the regulations so made must be observed. When no such regulations exist, and when all the members stand on the same footing, the surplus assets are divisible among them according to the number of shares held by them in the Company.

In cases where there are shares having a preference as regards capital, the holders of such shares are entitled to be paid in priority to the ordinary and deferred shareholders.¹ Where there are no shares entitled to a preference as regards capital, and when some of the shares are fully paid up and others only partly paid up, the surplus assets are first applied in repaying to the holders of the fully paid-up shares the amount paid by them in excess of the other shareholders, so that all the members may be placed in a position of equality. If the surplus assets are not sufficient for this purpose, the liquidator is justified in making a call upon the partly paid-up holders of partly paid-up shares for the purpose of adjusting the rights between them and the fully paid-up shareholders.² When the shareholders have been placed in a position of equality, and there are still surplus assets, such assets are divided among all the shareholders in proportion to the number of shares held by them, irrespective of the amount paid up on their shares at the date of the winding up.

Reserve Fund.—As to the application of money standing at the credit of reserve fund account, see Reserve Fund.

PROCEDURE WHEN AFFAIRS OF COMPANY WOUND UP. — *In Liquidation by Court.* — When the affairs of the Company have been completely wound up, the Court makes an order that the Company be dissolved from the date of such order, and the Company is dissolved accordingly.³

In voluntary Winding up.—The procedure in this case is regulated by secs. 142 and 143 of the Act of 1862.

¹ *Monkland Iron and Coal Co. v. Henderson*, 1883, 10 R. 494.

² *In re Anglesea Colliery Co.*, 1866, 1 Ch. App. 555, followed; *Paterson v. Buchanan*, 1875, 2 R. 490.

³ Act 1862, secs. 111, 112.

Disposal of Books, Accounts, and Documents of the Company.

—When any Company has been wound up, and is about to be dissolved, the books, accounts, and documents of the Company and of the liquidators may be disposed of in the manner directed by sec. 155 of the Act of 1862.

CHAPTER XIV

RECONSTRUCTION OF COMPANIES

WHILE extensive powers are now conferred¹ upon a Company, with the sanction of the Court, to alter its Memorandum of Association and so extend the objects for which it was originally formed, there are circumstances which arise in the development of the business of a Company, either financially or otherwise, which cannot competently be dealt with by means of the machinery provided by the Act just referred to. To attain the desired end, resort is had to reconstruction.

The following are the ways by which the reconstruction of a Company can be accomplished :—

1. By special Act of Parliament.
2. In terms of sec. 161 of the Act of 1862.
3. By proceedings under the Joint Stock Companies Arrangement Act of 1870.
4. Reconstruction without a winding up.

By special Act of Parliament.—Every person—and this includes a Company as well as an individual—has the right to apply to Parliament with reference to any subject in which he is interested. In the case of ordinary joint stock trading Companies the intervention of Parliament is seldom sought, but the affairs of a Company may become so involved that a rearrangement thereof is impossible by means of a winding up and reconstruction, and extrication from the difficulties can only be satisfactorily accomplished by means of a special Act of

¹ Act 1890, for which see Appendix.

Parliament. This course is so full of technicalities that it is impossible in a work like the present to do more than mention the competency of obtaining a special Act.

Unless power to apply to Parliament is contained in the Memorandum of Association, the directors or other persons promoting a Bill run the risk of becoming personally liable for the expenses incurred should the Bill not become law, as it has been decided that the Court will, at the instance of a single dissentient shareholder, prohibit the application of the Company's funds in promoting a Bill in Parliament altering the constitution of the Company. Of course, if the Bill pass, the Act of Parliament will contain a clause providing for the payment of the expenses incurred in the promotion of it.

*Reconstruction under sec. 161 of the Act of 1862.*¹—Reconstructions under this section are of frequent occurrence, and may with advantage be resorted to in a variety of circumstances, of which the following are fair examples :—

1. Where a Company proposes to carry on some business not covered by its Memorandum of Association, and proceedings under the Act of 1890 are deemed inexpedient.
2. Where it is desired to regulate the priority of shares, and to take power to issue shares having a preference over existing shares.
3. Where it is desired to make alterations on the capital of the Company, whether by return of a portion thereof to the shareholders, cancelling lost capital, or otherwise, without the necessity of complying with the statutory provisions with regard to a reduction of capital.²

Course to be adopted.—The first thing essential is that the Company is about to be, or is in the course of being, wound up voluntarily. This applies to a winding up under the supervision of the Court as well as to a purely voluntary winding up.

¹ See Appendix.

² See Reduction of Capital.

Two special resolutions are necessary, and these must be strictly carried out in terms of the Acts.¹ The one resolution is for the winding up of the Company, and the other for a sale or arrangement under sec. 161. The two resolutions should run concurrently, for the reason that although the resolution which would in ordinary circumstances be first submitted, namely, that to wind up the Company, is passed, the second resolution authorising the sale or arrangement might not pass. No special resolution is deemed invalid for the purposes of the section by reason that it is passed antecedently to or concurrently with any resolution for winding up the Company or for appointing liquidators. If at the time the special resolution authorising the sale or arrangement is confirmed the voluntary winding up is proceeding under the supervision of the Court, the arrangement must receive the sanction of the Court. Again, if an order is made within a year for winding up the Company by or under the supervision of the Court, a resolution passed by a Company being wound up altogether voluntarily is not of any validity unless it is sanctioned by the Court.

The circular convening the meeting at which the transaction is to be submitted to the shareholders must contain distinct notice that the arrangement is to be carried out by the liquidators under sec. 161.²

The resolution may confer either a general authority on the liquidators to carry through the transaction, or to carry it out in a particular way, as by the adoption by the meeting of a specific scheme of arrangement, or the approval of a draft minute of agreement submitted along with the resolution.

The Statute requires that the transfer or sale is to be by the liquidators of the old Company, with the sanction of a special resolution of the Company by which they were appointed, to another Company. Hence a sale to a person about to form a

¹ See Resolutions of Company.

² *Imperial Bank of China, India, and Japan v. Bank of Hindustan, China, and Japan*, L. R. 9 Eq. 91.

Company is invalid.¹ While the sale must be to a Company, it is not necessary that the Company should be incorporated under the Companies Acts. A sale to any Company, English or foreign, is valid.² While it is the Company that authorises the sale, it cannot enter into the contract. The liquidators alone can do this. A liquidator is not entitled to repayment of his outlays in an unsuccessful attempt to sell the Company's assets under sec. 161.³

The shareholders can only decide on the nature of the consideration to be accepted, and not on the mode of its distribution. Thus where there are preference and ordinary shareholders, the meeting cannot stipulate that any of the members are to get a different proportion of the capital of the new Company from that which they were entitled to in the old Company. The consideration for the sale must be distributed as if it were so much cash, unless the Articles of Association otherwise provide, or the prejudiced shareholders agree.⁴ Generally stated, the meaning of the section under consideration is that the Company in voluntary winding up instead of disposing of its assets for money, may dispose of them for shares in any other Company, or policies, or any like interest, or future profits, or other benefit from the purchasing Company; but whatever the benefit is, in whatever shape taken, it is to be given or paid or handed over to the liquidators for the benefit of the contributories of the Company wound up, subject to the payment of their debts.⁵

A sale may be made in consideration of shares in the new Company which are only in part paid up; but a shareholder in the old Company cannot be compelled to take shares in the new Company upon which there is a liability. The remedy of a shareholder so situated, is to dissent from the arrangement. If he fails to do so in the manner provided by the Statute, and declines to take the shares offered, he thereby

¹ *Bird v. Bird's Patent, etc. Sewage Co.*, 9 Ch. D. 358.

² *In re Irrigation Co. of France*, 6 Ch. 183.

³ *Liquidator of Scottish Assurance Corporation v. Miller*, 1891, 18 R. 496.

⁴ *Simpson v. Palace Theatre Ltd.*, 1893, W. N. 91.

⁵ *Griffith v. Paget*, 1877, 5 Ch. D. 898.

loses all interest in the new Company, and consequently in the assets of the old Company which have been transferred to the new Company. Where there are shareholders who decline to take up the shares, the usual course is to give the liquidator power to sell the shares. The purchase price thereof belongs to the dissentient members of the old Company.

It is competent to provide in the scheme that applications for an allotment of shares in the new Company must be made within a specified time. If any shareholder fails to make his application timeously, he cannot subsequently compel the liquidator to procure for him shares in the new Company. If no time limit is specified, the shareholders of the old Company must make their applications within a reasonable time.

It is not an objection to an agreement under the section in question that it contains a stipulation that the purchasing Company shall take a portion only of the assets and liabilities of the transferring Company, or that it contains a stipulation that the shares in the purchasing Company which are to be given as a consideration for the transfer, shall be distributed directly among the shareholders of the transferring Company, and not given to the liquidators as part of the assets in the winding up.¹

Remedy of dissentient Shareholder.— Any sale made or arrangement entered into by the liquidators in pursuance of the section is binding on the members of the Company being wound up; subject to this proviso, that if any member of the Company being wound up who has not voted in favour of the special resolution passed by the Company of which he is a member, at either of the meetings held for passing the same, expresses his dissent from any such special resolution in writing addressed to the liquidators or one of them, and left at the registered office of the Company not later than seven days after the date of the meeting at which such special resolution was passed, such dissentient member may require the liquidators to do one of the following things, as the liquidators may prefer; that is to say, either to abstain from

¹ *In re City and County Investment Co.*, 13 Ch. D. 475.

carrying such resolution into effect, or to purchase the interest held by such dissentient member at a price to be determined in manner hereinafter stated, such purchase money to be paid before the Company is dissolved, and to be raised by the liquidators in such manner as may be determined by special resolution. If a shareholder does not express his dissent in the manner provided by the Statute, and within the time fixed, he must either accept the terms of the reconstruction or lose any benefit arising from the transaction.

Mode of determining Price to be paid to dissentient Shareholder.—The price to be paid for the purchase of the interest of any dissentient member may be determined by agreement; but if the parties dispute about the same, such dispute must be settled by arbitration.¹

Position of Creditors of transferring Company.—An agreement under sec. 161 is binding upon the creditors of the transferring Company, but subject to the following qualifications: that they are paid in full, or voluntarily agree to accept a composition, or accept the new Company as their debtors. There is no power given in the section to compel a creditor to accept anything less than 20s. in the £1. The remedy of a creditor who cannot get payment of his debt is to obtain a winding-up order before the expiration of a year.²

If an arrangement with creditors is contemplated whereby they are to take less than 20s. in the £1, or to have their claims postponed without the consent of all the creditors, then proceedings must either be adopted under sec. 136 of the Act of 1862 or under the Act of 1870.

A liquidator has no power to release a dissentient shareholder from his liability to the creditors. All he can do is to purchase such dissentient member's interest in the assets of the Company, but the shareholder's name must appear on the list of contributories.³

¹ As to conducting of reference, see sec. 162 of Act of 1862.

² *In re City and County Investment Co.*, *supra*.

³ *In re Imperial Land Co. of Marseilles*, 6 Ch. D. 96.

Reconstruction under the Joint Stock Companies Arrangement Act, 1870.—Where any compromise or arrangement is proposed between a Company which is in the course of being wound up, either voluntarily or by or under the supervision of the Court, and the creditors of such Company or any class of such creditors, it is lawful for the Court, in addition to any other of its powers, on the application in a summary way of any creditor or the liquidator, to order that a meeting of such creditors or class of creditors shall be summoned in such manner as the Court shall direct; and if a majority in number representing three-fourths in value of such creditors or class of creditors present, either in person or by proxy at such meeting, shall agree to any arrangement or compromise, such arrangement or compromise is, if sanctioned by an order of the Court, binding on all such creditors or class of creditors, as the case may be, and also on the liquidator and contributors of the said Company.

Prior to this Act a majority of the creditors of a Company which was being wound up by the Court had no power to compel a dissentient minority to accept a compromise or other arrangement in respect of their debts, although in a voluntary winding up there was such power. It will be noted that the powers conferred on the Court are in addition to any of its powers under the Companies Acts, and it frequently happens that in the carrying out of arrangements under the Act of 1870 such powers require to be exercised. Thus, if the proceedings in the liquidation are to be stayed, this is done under sec. 89 of the Act of 1862. Again, if a sale to an individual of the whole or any portion of the property of the Company forms part of the arrangement, the sale is carried out in the case of a winding up by the Court under sec. 95, in the case of a voluntary winding up under sec. 138, and in the case of a winding up under the supervision of the Court under sec. 151, all of the Act of 1862.

The intention of the Legislature in the Act seems to have been that the Court should be in a position to bind everybody

to what the Court thinks is a beneficial compromise to creditors, liquidators, and shareholders.

The word "creditor" in the Act is general. No distinction is made between the different kinds of creditors, and there is nothing to except any particular class of creditors from the jurisdiction of the Court. It is, however, competent for classes of creditors to compromise with one another as well as with the Company.

It has been settled by several cases that where a scheme has been approved by the necessary majority of the creditors the Court has power to sanction it, although its effect may be to deprive a dissentient minority of their security, either in whole or in part, and even where it involves their conversion from the position of creditors, whether as holders of debentures¹ or otherwise, into that of preferential shareholders fully paid up. At the same time the Court will examine the scheme, and judge for itself whether it is one which ought to be sanctioned. The Statute has not laid down any rules for the guidance of the Court, nor imposed any limitation upon its action in this respect. But the Court of Appeal in one case,² while not professing to give an exhaustive definition of the rules which ought to guide the Court in such matters, said this: "In exercising the power of sanctioning a scheme of arrangement conferred on it by the Act, the Court will not only ascertain that all the statutory conditions have been complied with, but will also consider whether the class of creditors summoned to the meeting was fairly represented by those who attended, and whether the statutory majority who approved of the scheme were acting *bonâ fide*, or were seeking to promote interests adverse to those of the class whom they professed to represent, and generally whether the arrangement is such as a man of business would reasonably approve."

Meeting of Creditors.—The meeting is convened and con-

¹ *In re Empire Mining Co.*, 1890, 44 Ch. D. 402.

² *The Alabama, New Orleans, and Pacific Junction Railway Co.*, L. R. 1891, 1 Ch. 213.

ducted in the manner directed by the Court. The liquidator is usually intrusted with the calling of the meeting. The creditors can vote by proxy at the meeting, and the Court is not bound to follow the general practice of producing proxies at meetings when the result of so doing would be to defeat the scheme, and may act on a foreign telegram as evidence of proxy voting abroad.¹

When there is only one liquidation, every creditor, wherever residing, is entitled to be heard; but when there are several liquidations in different countries, only the creditors in each country are entitled to a hearing in such country.²

Where the Company has issued debenture bonds payable to bearer, or which pass by delivery, the holders thereof in voting must produce the bonds.

It is not necessary that a majority in number and three-fourths in value of the creditors or class of creditors shall be present in person or by proxy at the meeting directed to be called and shall agree to the arrangement, but merely that a majority in number and three-fourths in value of those who may be present, either in person or by proxy at such meeting, shall so agree.³

Proxy Forms.—These should be duly stamped.⁴

Proceedings reported to Court.—The result of the meeting is reported to the Court, and the arrangement come to is either approved of or not. When the arrangement is a fair one, and is likely to be beneficial to all parties, the Court will not be astute to find technical defects in the proceedings, but it is doubtful whether any alteration can be made upon the scheme by the Court without the assent of a further meeting of creditors.⁵ Sometimes the liquidator, who is instructed to report the proceedings, is authorised to accept any modification

¹ *In re English, Scottish, and Australian Chartered Bank*, 1893, 3 Ch. 385.

² *In re Queensland National Bank*, 1893, W. N. 128.

³ *California Redwood Co. and Liquidators*, 1885, 13 R. 335.

⁴ See p. 108.

⁵ *Dynevor, etc. Collieries Co.*, 11 Ch. D. 605.

of the scheme the Court may desire ; but, notwithstanding this authority, no material alteration will be made on the scheme by the Court without a further meeting of creditors.

Reconstruction without Winding up.—Power is frequently now inserted in a Company's Memorandum of Association to sell, dispose of, or transfer the business, property, and undertaking of the Company, or any branch or part thereof, in consideration of payment in cash, or in shares, or stock, or in debentures, or other securities of any other Company, or partly in each of such modes of payment, or for such other consideration as may be deemed proper, and to distribute the price, howsoever paid or satisfied, among the members in or towards satisfaction of their interest in the assets of the Company. The taking of such a power is competent, and hence under it a reconstruction can be carried through without a winding up.¹

¹ *Cotton v. Imperial and Foreign Agency Corporation*, 1892, 3 Ch. 454 ; *New Zealand Gold Extraction Co. v. Peacock*, 1894, 1 Q. B. 622.

APPENDICES.

APPENDIX I.

MEMORANDA ISSUED BY REGISTRAR OF JOINT STOCK COMPANIES.

1. All returns and letters relating to the registration of Joint Stock Companies should be addressed to "The Registrar of Joint Stock Companies, Exchequer Chambers, Edinburgh."

2. For information relative to the constitution and incorporation of companies, see Part I. of the Companies Act, 1862, and the forms in the second schedule to that Act.

3. When a company is being promoted it is desirable that the proposed name should be sent to the Registrar for approval two or three days before the papers are to be lodged for registration.

4. When special Articles of Association are to be registered they must be printed (Act 1862, §§ 14-16).

5. When special articles are not registered, a docquet should be put on the Memorandum, stating that it is registered without Articles of Association.

6. In the case of every new company it is requested that two copies of the printed Memorandum and Articles of Association may be sent to the Registrar at an early date after registration.

7. The Memorandum and Articles of Association must each bear a deed stamp at 10s. (§§ 11 and 16, Act 1862).

8. Under the provisions of the Public Offices Fees Act, the Lords of Her Majesty's Treasury require all fees payable in that office, or to the officers thereof, to be collected by means of stamps.

9. For the amount of Registration Fees, see Tables on following pages.

10. The *ad valorem* Stamp-Duty of 5s. per cent. on the nominal share capital of *any* company to be registered with limited liability, or on the amount of *any* increase of registered capital of any company now registered, or to be registered, with limited liability (62 and 63 Vict., c. 9, § 7), is *in addition* to the fees and deed stamps, and must be impressed on a form of Statement of Capital provided for the purpose, which may be obtained from the Registrar. This duty is payable on the whole nominal amount of the share capital whether raised before or after the registration.

11. Every company registered under the Companies Acts must, before carrying on business, file with the Registrar a notice of the situation of its registered office. and subsequently of any change therein (Act 1862, §§ 39-40).

12. Every company having a capital divided into shares or stock must file annually with the Registrar a summary of its capital and list of its members, made up to the 14th day after the first ordinary general meeting in each year, completed within seven days after such 14th day, and forthwith forwarded to the Registrar * (§§ 26, 27, 29).

13. Every company formed under the Companies Acts must hold a general meeting within four months after its Memorandum of Association is registered (Act 1867, § 39). The first return of capital and members is to be made up to the 14th day after this meeting, and registered as in paragraph 12.

* This provision does not apply to a company registered pursuant to § 23 of the Companies Act, 1867, and holding a licence from the Board of Trade to dispense with the word "Limited" as part of its name.

14. A copy of every special resolution passed by a company (Act 1862, §§ 51, 52, 53) must be *printed* and forwarded to the Registrar within fifteen days from the date of the confirmation of the resolution.

15. All documents tendered for registration must be authenticated by the written signature of an authorised officer of the company (Act 1862, § 64), and must be according to the approved forms, and must each bear an *impressed* Companies Registration fee stamp of 5s. In the case of an increase of capital, an *ad valorem* stamp must, in addition, be impressed upon the prescribed form for giving notice of such increase (§ 34).

16. Office copies are charged for at the rate of 6d. per sheet of 200 words, and certificates of incorporation, after the first, 5s. each. The inspection fee is 1s. for each company searched [§ 174 (5)].

17. Stamps for office copies, and all the authorised forms, may be obtained from John Oswald & Son, Acting Fee Stamp Distributors and Registration Agents, General Register House, Edinburgh; or by remitting the amount mentioned below to the Postal Telegraph Office, No. 11 Parliament Square, Edinburgh.

AUTHORISED FORMS.

No. of Form.	Description.	Per Form.	
		Stamped.	Unstamped.
		<i>s. d.</i>	<i>s. d.</i>
4	Notice of Registered Office,	5 2	0 2
5	Change of Registered Office,	5 2	0 2
6	Summary of Capital, &c. (Outside Sheet),	5 2	0 2
7	Summary of Capital, &c., Share Warrants,	5 2	0 2
8	Continuation Forms for Nos. 6 and 7, . . . . .	...	0 1
9	List of Directors or Managers,	5 2	0 2
10	Notice of Increase in Capital, . . . . .	...	0 2
11	Notice of Increase in Members, . . . . .	...	0 2
14	Consent to take Name,	5 2	0 2
15	Return of Final Winding-up Meeting,	5 2	0 2
16	Special Resolution,	5 1	0 1
17	Application to Register Existing Company as Limited, . . . . .	...	0 2
18	Application to Register Existing Company as Unlimited, . . . . .	...	0 2
19	List of Members, . . . . .	...	0 2
20	Continuation Sheets for No. 19, . . . . .	...	0 1
21	Statement of Capital, . . . . .	...	0 2
22	Resolution to Register,	5 2	0 2
23	Declaration Verifying Documents, . . . . .	...	0 2
I R	Name of Registered Officer,	5 2	0 2
II R	Loan Capital Half-Yearly Account,	5 3	0 3
III R	New Borrowing Power,	5 2	0 2
25	Statement of Nominal Capital, { Customs and	...	...
26	Statement of Increase in Capital, { Inland Revenue Act, 1888.		
28	Notice of Conversion, &c., of Shares, . . . . .	...	0 2
29	Notice of Office, Colonial Registers Act, . . . . .	...	0 2

For use in the Registration of existing Companies.

TABLE OF FEES to be paid to the REGISTRAR of JOINT STOCK COMPANIES, as contained in Tables B and C, First Schedule, Companies Act, 1862.

1. The *ad valorem* fee on the registration of a company having a capital divided into shares (Table B) is, shortly, £1 a £1000 for the first £5000 of capital (minimum fee, £2), 5s. a £1000 after the first £5000 up to £100,000, and 1s. for every £1000 after the first £100,000 up to £525,000, which takes the maximum fee of £50.

The following are the fees for amounts of capital of frequent occurrence :—

Where the Amount of Nominal Capital does not exceed	Fee.	Where the Amount of Nominal Capital does not exceed	Fee.
£	£ s.	£	£ s.
2,000	2 0	115,000	29 10
3,000	3 0	120,000	29 15
4,000	4 0	125,000	30 0
5,000	5 0	130,000	30 5
6,000	5 5	135,000	30 10
7,000	5 10	140,000	30 15
8,000	5 15	145,000	31 0
9,000	6 0	150,000	31 5
10,000	6 5	160,000	31 15
11,000	6 10	170,000	32 5
12,000	6 15	180,000	32 15
13,000	7 0	190,000	33 5
14,000	7 5	200,000	33 15
15,000	7 10	210,000	34 5
20,000	8 15	220,000	34 15
25,000	10 0	230,000	35 5
30,000	11 5	240,000	35 15
35,000	12 10	250,000	36 5
40,000	13 15	260,000	36 15
45,000	15 0	270,000	37 5
50,000	16 5	280,000	37 15
55,000	17 10	290,000	38 5
60,000	18 15	300,000	38 15
65,000	20 0	325,000	40 0
70,000	21 5	350,000	41 5
75,000	22 10	375,000	42 10
80,000	23 15	400,000	43 15
85,000	25 0	425,000	45 0
90,000	26 5	450,000	46 5
95,000	27 10	475,000	47 10
100,000	28 15	500,000	48 15
105,000	29 0	525,000	50 0
110,000	29 5		Maximum Fee.

For registration of any increase of capital made after the first registration of the company, the same fees per £1000, or part of a £1000, as would have been

payable if such increased capital had formed part of the original capital at the time of registration.

Provided that no company shall be liable to pay in respect of nominal capital on registration, or afterwards, any greater amount of fees than £50, taking into account, in the case of fees payable on an increase of capital after registration, the fees paid on registration.

For registration of any *existing* company, except such companies as are exempted from payment of fees, the same fee as is charged for registering a new company.

For registering any document, other than the Memorandum of Association, a fee of 5s.

For making a record of any fact, a fee of 5s.

2. Fees on the registration of a company *not* having a capital divided into shares (Table C).

Where the Number of Members as stated in the Articles of Association does not exceed	Fee.	Where the Number of Members as stated in the Articles of Association does not exceed	Fee.
	£ s.		£ s.
20	2 0 (Minimum Fee).	700	8 0
		750	8 5
100	5 0	800	8 10
150	5 5	850	8 15
200	5 10	900	9 0
250	5 15	950	9 5
300	6 0	1000	9 10
350	6 5	1050	9 15
400	6 10	1100	10 0
450	6 15	1150	10 5
500	7 0	1200	10 10
550	7 5	1250	10 15
600	7 10	1300	11 0
650	7 15	1350	11 5

And an additional fee of 5s. for every 50 members, or less number than 50 members, up to 3100, which takes the maximum fee of £20.

For registration of a company in which the number of members is stated in the Articles of Association to be unlimited, a fee of £20.

For registration of any increase on the number of members made after the registration of the company, in respect of every 50 members, or less than 50 members, of such increase, 5s. Provided that no company shall be liable to pay on the whole a greater fee than £20 in respect of its number of members, taking into account the fee paid on the first registration of the company.

For registration of any *existing* company, except such companies as are exempted from payment of fees, the same fee as is charged for registering a new company.

For registering any document, except the Memorandum of Association, a fee of 5s.

For making a record of any fact, a fee of 5s.

EXCHEQUER CHAMBERS, EDINBURGH.

APPENDIX II.



ACTS OF PARLIAMENT REGULATING JOINT STOCK
COMPANIES REGISTERED IN SCOTLAND.

ACT OF PARLIAMENT

FOR

The Incorporation, Regulation, and Winding up of Trading Companies and other Associations.—[25 and 26 Vict., cap. 89.—7th August 1862.]

Repealed 1893. { Whereas it is expedient that the laws relating to the incorporation, regulation, and winding up of trading companies and other associations should be consolidated and amended: Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Preliminary.

I. *Short title.*—This Act may be cited for all purposes as "The Companies Act, 1862."

Repealed 1893. { II. *Commencement of Act.*—This Act, with the exception of such temporary enactment as is herein-after declared to come into operation immediately, shall not come into operation until the second day of November one thousand eight hundred and sixty-two, and the time at which it so comes into operation is herein-after referred to as the commencement of this Act.

II. *Definition of insurance company.*—For the purposes of this Act a company that carries on the business of insurance in common with any other business or businesses shall be deemed to be an insurance company.

IV. *Prohibition of Partnerships exceeding certain number.*—No company, association, or partnership consisting of more than ten persons shall be formed, after the commencement of this Act, for the purpose of carrying on the business of banking, unless it is registered as a company under this Act, or is formed in pursuance of some other Act of Parliament, or of letters patent; and no company, association, or partnership consisting of more than twenty persons shall be formed, after the commencement of this Act, for the purpose of carrying on any other business that has for its object the acquisition of gain by the company, association, or partnership, or by the individual members thereof, unless it is registered as a company under this Act, or is formed in pursuance of some other Act of Parliament, or of letters patent, or is a company engaged in working mines within and subject to the jurisdiction of the stannaries.

V. *Division of Act.*—This Act is divided into nine parts, relating to the following subject matters :

The first part,—to the constitution and incorporation of companies and associations under this Act :

The second part,—to the distribution of the capital and liability of members of companies and associations under this Act :

The third part,—to the management and administration of companies and associations under this Act :

The fourth part,—to the winding up of companies and associations under this Act :

The fifth part,—to the registration office :

The sixth part,—to application of this Act to companies registered under the Joint Stock Companies Acts :

The seventh part,—to companies authorised to register under this Act :

The eighth part,—to application of this Act to unregistered companies :

The ninth part,—to repeal of Acts and temporary provisions.

PART I.

CONSTITUTION AND INCORPORATION OF COMPANIES AND ASSOCIATIONS UNDER THIS ACT.

Memorandum of Association.

VI. *Mode of forming company.*—Any seven or more persons associated for any lawful purpose may, by subscribing their names to a memorandum of association, and otherwise complying with the requisitions of this Act in respect of registration, form an incorporated company, with or without limited liability.

VII. *Mode of limiting liability of members.*—The liability of the members of a company formed under this Act may, according to the memorandum of association, be limited either to the amount, if any, unpaid on the shares respectively held by them, or to such amount as the members may respectively undertake by the memorandum of association to contribute to the assets of the company in the event of its being wound up.

VIII. *Memorandum of association of a company limited by shares.*—Where a company is formed on the principle of having the liability of its members limited to the amount unpaid on their shares, herein-after referred to as a company limited by shares, the memorandum of association shall contain the following things ; (that is to say,)

(1.) The name of the proposed company, with the addition of the word "limited" as the last word in such name :

(2.) The part of the United Kingdom, whether England, Scotland, or Ireland, in which the registered office of the company is proposed to be situate :

- (3.) The objects for which the proposed company is to be established :
- (4.) A declaration that the liability of the members is limited :
- (5.) The amount of capital with which the company proposes to be registered divided into shares of a certain fixed amount :

Subject to the following regulations :

- (1.) That no subscriber shall take less than one share :
- (2.) That each subscriber of the memorandum of association shall write opposite to his name the number of shares he takes.

IX. Memorandum of association of a company limited by guarantee.—Where a company is formed on the principle of having the liability of its members limited to such amount as the members respectively undertake to contribute to the assets of the company in the event of the same being wound up, herein-after referred to as a company limited by guarantee, the memorandum of association shall contain the following things ; (that is to say),

- (1.) The name of the proposed company, with the addition of the word "limited" as the last word in such name :
- (2.) The part of the United Kingdom, whether England, Scotland, or Ireland, in which the registered office of the company is proposed to be situate :
- (3.) The objects for which the proposed company is to be established :
- (4.) A declaration that each member undertakes to contribute to the assets of the company, in the event of the same being wound up, during the time that he is a member, or within one year afterwards, for payment of the debts and liabilities of the company contracted before the time at which he ceases to be a member, and of the costs, charges, and expenses of winding up the company, and for the adjustment of the rights of the contributors amongst themselves, such amount as may be required, not exceeding a specified amount.

X. Memorandum of association of an unlimited company.—Where a company is formed on the principle of having no limit placed on the liability of its members, herein-after referred to as an unlimited company, the memorandum of association shall contain the following things ; (that is to say),

- (1.) The name of the proposed company :
- (2.) The part of the United Kingdom, whether England, Scotland, or Ireland, in which the registered office of the company is proposed to be situate :
- (3.) The objects for which the proposed company is to be established.

XI. Stamp, signature, and effect of memorandum of association.—The memorandum of association shall bear the same stamp as if it were a

deed, and shall be signed by each subscriber in the presence of, and be attested by, one witness at the least, and that attestation shall be a sufficient attestation in Scotland as well as in England and Ireland : It shall, when registered, bind the company and the members thereof to the same extent as if each member had subscribed his name and affixed his seal thereto, and there were in the memorandum contained, on the part of himself, his heirs, executors, and administrators, a covenant to observe all the conditions of such memorandum, subject to the provisions of this Act.

XII. Power of certain companies to alter memorandum of association.—Any company limited by shares may so far modify the conditions contained in its memorandum of association, if authorised to do so by its regulations as originally framed, or as altered by special resolution in manner herein-after mentioned, as to increase its capital, by the issue of new shares of such amount as it thinks expedient, or to consolidate and divide its capital into shares of larger amount than its existing shares, or to convert its paid-up shares into stock, but, save, as aforesaid, and save as is herein-after provided in the case of a change of name, no alteration shall be made by any company in the conditions contained in its memorandum of association.

XIII. Power of companies to change name.—Any company under this Act, with the sanction of a special resolution of the company passed in manner herein-after mentioned, and with the approval of the Board of Trade testified in writing under the hand of one of its secretaries or assistant secretaries, may change its name, and upon such change being made, the registrar shall enter the new name on the register in the place of the former name, and shall issue a certificate of incorporation altered to meet the circumstances of the case : but no such alteration of name shall affect any rights or obligations of the company, or render defective any legal proceedings instituted or to be instituted by or against the company, and any legal proceedings may be continued or commenced against the company by its new name that might have been continued or commenced against the company by its former name.

Articles of Association.

XIV. Regulations to be prescribed by articles of association.—The memorandum of association may, in the case of a company limited by shares, and shall, in the case of a company limited by guarantee or unlimited, be accompanied, when registered, by articles of association signed by the subscribers to the memorandum of association, and prescribing such regulations for the company as the subscribers to the memorandum of association deem expedient : The articles shall be expressed in separate paragraphs, numbered arithmetically : They may adopt all or any of the provisions contained in the table marked A in the first schedule hereto : They shall, in the case of a company, whether limited by guarantee or unlimited, that has a capital divided into shares, state the amount of capital with which the company proposes to be registered ;

and in the case of a company, whether limited by guarantee or unlimited, that has not a capital divided into shares, state the number of members with which the company proposes to be registered, for the purpose of enabling the registrar to determine the fees payable on registration: In a company limited by guarantee or unlimited, and having a capital divided into shares, each subscriber shall take one share at the least, and shall write opposite to his name in the memorandum of association the number of shares he takes.

XV. Application of Table A.—In the case of a company limited by shares, if the memorandum of association is not accompanied by articles of association, or in so far as the articles do not exclude or modify the regulations contained in the table marked A in the first schedule hereto, the last-mentioned regulations shall, so far as the same are applicable, be deemed to be the regulations of the company in the same manner and to the same extent as if they had been inserted in articles of association, and the articles had been duly registered.

XVI. Stamp, signature, and effect of articles of association.—The articles of association shall be printed, they shall bear the same stamp as if they were contained in a deed, and shall be signed by each subscriber in the presence of, and be attested by, one witness at the least, and such attestation shall be a sufficient attestation in Scotland as well as in England and Ireland: When registered they shall bind the company and the members thereof to the same extent as if each member had subscribed his name and affixed his seal thereto, and there were in such articles contained a covenant on the part of himself, his heirs, executors, and administrators, to conform to all the regulations contained in such articles, subject to the provisions of this Act, and all monies payable by any member to the company, in pursuance of the conditions and regulations of the company, or any of such conditions or regulations, shall be deemed to be a debt due from such member to the company, and in England and Ireland to be in the nature of a specialty debt.

General Provisions.

XVII. Registration of memorandum of association and articles of association, with fees as in Table B.—The memorandum of association and the articles of association, if any, shall be delivered to the registrar of joint stock companies herein-after mentioned, who shall retain and register the same: There shall be paid to the registrar by a company having a capital divided into shares, in respect of the several matters mentioned in the table marked B in the first schedule hereto, the several fees therein specified, or such smaller fees as the Board of Trade may from time to time direct: and by a company not having a capital divided into shares in respect of the several matters mentioned in the table marked C in the first schedule hereto, the several fees therein specified, or such smaller fees as the Board of Trade may from time to time direct: All fees paid to the said Registrar in pursuance of this Act shall be paid into the receipt of Her

Majesty's Exchequer, and be carried to the account of the Consolidated Fund of the United Kingdom of Great Britain and Ireland.

XVIII. Effect of registration.—Upon the registration of the memorandum of association, and the articles of association in cases where articles of association are required by this Act or by the desire of the parties to be registered, the registrar shall certify under his hand that the company is incorporated, and in the case of a limited company that the company is limited: The subscribers of the memorandum of association, together with such other persons as may from time to time become members of the company, shall thereupon be a body corporate by the name contained in the memorandum of association, capable forthwith of exercising all the functions of an incorporated company, and having perpetual succession and a common seal, with power to hold lands, but with such liability on the part of the members to contribute to the assets of the company in the event of the same being wound up as is herein-after mentioned: A certificate of the incorporation of any company given by the registrar shall be conclusive evidence that all the requisitions of this Act in respect of registration have been complied with.

XIX. Copies of memorandum and articles to be given to members.—A copy of the memorandum of association, having annexed thereto the articles of association, if any, shall be forwarded to every member, at his request, on payment of the sum of one shilling, or such less sum as may be prescribed by the company, for each copy; and if any company makes default in forwarding a copy of the memorandum of association and articles of association, if any, to a member, in pursuance of this section, the company so making default shall for each offence incur a penalty not exceeding one pound.

XX. Prohibition against identity of names in companies.—No company shall be registered under a name identical with that by which a subsisting company is already registered, or so nearly resembling the same as to be calculated to deceive, except in a case where such subsisting company is in the course of being dissolved, and testifies its consent in such manner as the registrar requires; and if any company, through inadvertence or otherwise, is, without such consent as aforesaid, registered by a name identical with that by which a subsisting company is registered, or so nearly resembling the same as to be calculated to deceive, such first-mentioned company may, with the sanction of the Registrar, change its name, and upon such change being made the Registrar shall enter the new name on the register in the place of the former name, and shall issue a certificate of incorporation altered to meet the circumstances of the case; but no such alteration of name shall affect any rights or obligations of the company, or render defective any legal proceedings instituted or to be instituted by or against the company, and any legal proceedings may be continued or commenced against the company by its new name that might have been continued or commenced against the company by its former name.

XXI. Prohibition against certain companies holding land.—No company formed for the pur-

pose of promoting art, science, religion, charity, or any other like object, not involving the acquisition of gain by the company or by the individual members thereof, shall, without the sanction of the Board of Trade, hold more than two acres of land; but the Board of Trade may, by license under the hand of one of their principal secretaries or assistant secretaries, empower any such company to hold lands in such quantity and subject to such conditions as they think fit.

PART II.

DISTRIBUTION OF CAPITAL AND LIABILITY OF MEMBERS OF COMPANIES AND ASSOCIATIONS UNDER THIS ACT.

Distribution of Capital.

XXII. Nature of interest in company.—The shares or other interest of any member in a company under this Act shall be personal estate, capable of being transferred in manner provided by the regulations of the company, and shall not be of the nature of real estate, and each share shall, in the case of a company having a capital divided into shares, be distinguished by its appropriate number.

XXIII. Definition of "member."—The subscribers of the memorandum of association of any company under this Act shall be deemed to have agreed to become members of the company whose memorandum they have subscribed, and upon the registration of the company shall be entered as members on the register of members hereinafter mentioned; and every other person who has agreed to become a member of a company under this Act, and whose name is entered on the register of members, shall be deemed to be a member of the company.

XXIV. Transfer by personal representative.—Any transfer of the share or other interest of a deceased member of a company under this Act, made by his personal representative, shall, notwithstanding such personal representative may not himself be a member, be of the same validity as if he had been a member at the time of the execution of the instrument of transfer.

XXV. Register of members.—Every company under this Act shall cause to be kept in one or more books a register of its members, and there shall be entered therein the following particulars:

- (1.) The name and addresses, and the occupations, if any, of the members of the company, with the addition, in the case of a company having a capital divided into shares, of a statement of the shares held by each member, distinguishing each share by its number: And of the amount paid or agreed to be considered as paid on the shares of each member:
- (2.) The date at which the name of any person was entered in the register as a member:
- (3.) The date at which any person ceased to be a member:

And any company acting in contravention of this section shall incur a penalty not exceeding

five pounds for every day during which its default in complying with the provisions of this section continues, and every director or manager of the company who shall knowingly and wilfully authorise or permit such contravention shall incur the like penalty.

*** XXVI. Annual list of members.**—Every company under this Act, and having a capital divided into shares, shall make, once at least in every year, a list of all persons who, on the fourteenth day succeeding the day on which the ordinary general meeting, or if there is more than one ordinary meeting in each year, the first of such ordinary general meetings is held, are members of the company; and such list shall state the names, addresses, and occupations of all the members therein mentioned, and the number of shares held by each of them, and shall contain a summary specifying the following particulars:

- (1.) The amount of the capital of the company, and the number of shares into which it is divided:
- (2.) The number of shares taken from the commencement of the company up to the date of the summary:
- (3.) The amount of calls made on each share:
- (4.) The total amount of calls received:
- (5.) The total amount of calls unpaid:
- (6.) The total amount of shares forfeited:
- (7.) The names, addresses, and occupations of the persons who have ceased to be members since the last list was made, and the number of shares held by each of them.

The above list and summary shall be contained in a separate part of the register, and shall be completed within seven days after such fourteenth day as is mentioned in this section, and a copy shall forthwith be forwarded to the registrar of joint stock companies.

XXVII. Penalty on company, &c. not keeping a proper register.—If any company under this Act, and having a capital divided into shares, makes default in complying with the provisions of this Act with respect to forwarding such list of members or summary as is herein-before mentioned to the registrar, such company shall incur a penalty not exceeding five pounds for every day during which such default continues, and every director and manager of the company who shall knowingly and wilfully authorise or permit such default shall incur the like penalty.

XXVIII. Company to give notice of consolidation or of conversion of capital into stock.—Every company under this Act, having a capital divided into shares, that has consolidated and divided its capital into shares of larger amount than its existing shares, or converted any portion of its capital into stock, shall give notice to the registrar of joint stock companies of such consolidation, division, or conversion, specifying the shares so consolidated, divided, or converted.

XXIX. Effect of conversion of shares into stock.—Where any company under this Act, and

having a capital divided into shares, has converted any portion of its capital into stock, and given notice of such conversion to the registrar, all the provisions of this Act which are applicable to shares only shall cease as to so much of the capital as is converted into stock; and the register of members hereby required to be kept by the company, and the list of members to be forwarded to the registrar, shall show the amount of stock held by each member in the list instead of the amount of shares and the particulars relating to shares herein before required.

XXX. Entry of trusts on register.—No notice of any trust, expressed, implied, or constructive, shall be entered on the register, or be receivable by the registrar, in the case of companies under this Act and registered in England or Ireland.

XXXI. Certificate of shares or stock.—A certificate, under the common seal of the company, specifying any share or shares of stock held by any member of a company, shall be *prima facie* evidence of the title of the member to the share or shares or stock therein specified.

XXXII. Inspection of register.—The register of members, commencing from the date of the registration of the company shall be kept at the registered office of the company herein-after mentioned: Except when closed as herein-after mentioned, it shall during business hours, but subject to such reasonable restrictions as the company in general meeting may impose, so that not less than two hours in each day be appointed for inspection, be open to the inspection of any member gratis, and to the inspection of any other person on the payment of one shilling, or such less sum as the company may prescribe, for each inspection; and every such member or other person may require a copy of such register, or of any part thereof, or of such list or summary of members as is herein-before mentioned, on payment of sixpence for every hundred words required to be copied: If such inspection or copy is refused, the company shall incur for each refusal a penalty not exceeding two pounds, and a further penalty not exceeding two pounds for every day during which such refusal continues, and every director and manager of the company who shall knowingly authorise or permit such refusal shall incur the like penalty; and in addition to the above penalty, as respects companies registered in England and Ireland, any judge sitting in chambers, or the Vice-Warden of the Stannaries, in the case of companies subject to his jurisdiction, may by order compel an immediate inspection of the register.

XXXIII. Power to close register.—Any company under this Act may, upon giving notice by advertisement in some newspaper circulating in the district in which the registered office of the company is situated, close the register of members for any time or times not exceeding in the whole thirty days in each year.

XXXIV. Notice of increase of capital and of members to be given to registrar.—Where a company has a capital divided into shares, whether such shares may or may not have been converted into stock, notice of any increase in such capital

beyond the registered capital, and where a company has not a capital divided into shares, notice of any increase in the number of members beyond the registered number, shall be given to the registrar in the case of an increase of capital, within fifteen days from the date of the passing of the resolution by which such increase has been authorised, and in the case of an increase of members within fifteen days from the time at which such increase of members has been resolved on or has taken place, and the registrar shall forthwith record the amount of such increase of capital or members: If such notice is not given within the period aforesaid the company in default shall incur a penalty not exceeding five pounds for every day during which such neglect to give notice continues, and every director and manager of the company who shall knowingly and wilfully authorise or permit such default shall incur the like penalty.

XXXV. Remedy for improper entry or omission of entry in register.—If the name of any person is, without sufficient cause, entered in or omitted from the register of members of any company under this Act, or if default is made or unnecessary delay takes place in entering on the register the fact of any person having ceased to be a member of the company, the person or member aggrieved, or any member of the company, or the company itself, may, as respects companies registered in England or Ireland, by motion in any of Her Majesty's superior courts of law or equity, or by application to a judge sitting in chambers, or to the Vice-Warden of the Stannaries in the case of companies subject to his jurisdiction, and as respects companies registered in Scotland by summary petition to the Court of Session, or in such other manner as the said courts may direct, apply for an order of the court that the register may be rectified; and the court may either refuse such application, with or without costs, to be paid by the applicant, or it may, if satisfied of the justice of the case, make an order for the rectification of the register, and may direct the company to pay all the costs of such motion, application, or petition, and any damages the party aggrieved may have sustained: The court may in any proceeding under this section decide on any question relating to the title of any person who is a party to such proceeding to have his name entered in or omitted from the register, whether such question arises between two or more members or alleged members, or between any members or alleged members and the company, and generally the court may in any such proceeding decide any question that it may be necessary or expedient to decide for the rectification of the register; provided that the court, if a court of common law, may direct an issue to be tried, in which any question of law may be raised, and a writ of error or appeal, in the manner directed by "The Common Law Procedure Act, 1854," shall lie.

XXXVI. Notice to registrar of rectification of register.—Whenever any order has been made rectifying the register, in the case of a company hereby required to send a list of its members to the registrar, the court shall, by its order,

direct that due notice of such rectification be given to the registrar.

XXXVII. Register to be evidence.—The register of members shall be *prima facie* evidence of any matters by this Act directed or authorised to be inserted therein.

Liability of Members.

XXXVIII. Liability of present and past members of company.—In the event of a company formed under this Act being wound up, every present and past member of such company shall be liable to contribute to the assets of the company to an amount sufficient for payment of the debts and liabilities of the company, and the costs, charges, and expenses of the winding up, and for the payment of such sums as may be required for the adjustment of the rights of the contributories amongst themselves, with the qualifications following; (that is to say)

- 1.) No past member shall be liable to contribute to the assets of the company if he has ceased to be a member for a period of one year or upwards prior to the commencement of the winding up:
- (2.) No past member shall be liable to contribute in respect of any debt or liability of the company contracted after the time at which he ceased to be a member:
- (3.) No past member shall be liable to contribute to the assets of the company unless it appears to the court that the existing members are unable to satisfy the contributions required to be made by them in pursuance of this Act:
- (4.) In the case of a company limited by shares, no contribution shall be required from any member exceeding the amount, if any, unpaid on the shares in respect of which he is liable as a present or past member:
- (5.) In the case of a company limited by guarantee, no contribution shall be required from any member exceeding the amount of the undertaking entered into on his behalf by the memorandum of association:
- (6.) Nothing in this Act contained shall invalidate any provision contained in any policy of insurance or other contract whereby the liability of individual members upon any such policy or contract is restricted, or whereby the funds of the company are alone made liable in respect of such policy or contract:
- (7.) No sum due to any member of a company, in his character of a member, by way of dividends, profits, or otherwise, shall be deemed to be a debt of the company, payable to such member in a case of competition between himself and any other creditor not being a member of the company; but any such sum may be taken into account, for the purposes of the final adjustment of the rights of the contributories amongst themselves.

PART III.

MANAGEMENT AND ADMINISTRATION OF COMPANIES AND ASSOCIATIONS UNDER THIS ACT.

Provisions for protection of Creditors.

XXXIX. Registered office of company.—Every company under this Act shall have a registered office to which all communications and notices may be addressed: If any company under this Act carries on business without having such an office, it shall incur a penalty not exceeding five pounds for every day during which business is so carried on.

XL. Notice of situation of registered office.—Notice of the situation of such registered office, and of any change therein, shall be given to the registrar, and recorded by him: Until such notice is given, the company shall not be deemed to have complied with the provisions of this Act with respect to having a registered office.

XLI. Publication of name by a limited company.—Every limited company under this Act, whether limited by shares or by guarantee, shall paint or affix, and shall keep painted or affixed, its name on the outside of every office or place in which the business of the company is carried on, in a conspicuous position, in letters easily legible, and shall have its name engraven in legible characters on its seal, and shall have its name mentioned in legible characters in all notices, advertisements, and other official publications of such company, and in all bills of exchange, promissory notes, endorsements, cheques, and orders for money or goods purporting to be signed by or on behalf of such company, and in all bills of parcels, invoices, receipts, and letters of credit of the company.

XLII. Penalties on non-publication of name.—If any limited company under this Act does not paint or affix, and keep painted or affixed, its name in manner directed by this Act, it shall be liable to a penalty not exceeding five pounds for not so painting or affixing its name, and for every day during which such name is not so kept painted or affixed, and every director and manager of the company who shall knowingly and wilfully authorise or permit such default shall be liable to the like penalty; and if any director, manager, or officer of such company, or any person on its behalf, uses or authorises the use of any seal purporting to be a seal of the company whereon its name is not so engraven as aforesaid, or issues or authorises the issue of any notice, advertisement, or other official publication of such company, or signs or authorises to be signed on behalf of such company any bill of exchange, promissory note, endorsement, cheque, order for money or goods, or issues or authorises to be issued any bill of parcels, invoice, receipt, or letter of credit of the company, wherein its name is not mentioned in manner aforesaid, he shall be liable to a penalty of fifty pounds, and shall further be personally liable to the holder of any such bill of exchange, promissory note, cheque, or order for money or goods, for the amount thereof, unless the same is duly paid by the company.

XLIII. Register of mortgages.—Every limited company under this Act shall keep a register of all mortgages and charges specifically affecting property of the company, and shall enter in such register in respect of each mortgage or charge a short description of the property mortgaged or charged, the amount of charge created, and the names of the mortgagees or persons entitled to such charge: If any property of the company is mortgaged or charged without such entry as aforesaid being made, every director, manager, or other officer of the company who knowingly and wilfully authorises or permits the omission of such entry shall incur a penalty not exceeding fifty pounds: The register of mortgages required by this section shall be open to inspection by any creditor or member of the company at all reasonable times; and if such inspection is refused, any officer of the company refusing the same, and every director and manager of the company authorising or knowingly and wilfully permitting such refusal, shall incur a penalty not exceeding five pounds, and a further penalty not exceeding two pounds for every day during which such refusal continues; and in addition to the above penalty, as respects companies registered in England and Ireland, any judge sitting in chambers, or the Vice-Warden of the Stanneries in the case of companies subject to his jurisdiction, may by order compel an immediate inspection of the register.

XLIV. Certain companies to publish statement entered in schedule.—Every limited banking company and every insurance company, and deposit, provident, or benefit society under this Act, shall, before it commences business, and also on the first Monday in February and the first Monday in August in every year during which it carries on business, make a statement in the form marked D in the first schedule hereto, or as near thereto as circumstances will admit, and a copy of such statement shall be put up in a conspicuous place in the registered office of the company, and in every branch office or place where the business of the company is carried on, and if default is made in compliance with the provisions of this section the company shall be liable to a penalty not exceeding five pounds for every day during which such default continues, and every director and manager of the company who shall knowingly and wilfully authorise or permit such default shall incur the like penalty.

Every member and every creditor of any company mentioned in this section shall be entitled to a copy of the above-mentioned statement on payment of a sum not exceeding sixpence.

*** XLV. List of directors to be sent to registrar.**—Every company under this Act, and not having a capital divided into shares, shall keep at its registered office a register containing the names and addresses and the occupations of its directors or managers, and shall send to the registrar of joint stock companies a copy of such register, and shall from time to time notify to the registrar any change that takes place in such directors or managers.

*** XLVI. Penalty on company not keeping register of directors.**—If any company under this Act,

and not having a capital divided into shares, makes default in keeping a register of its directors or managers, or in sending a copy of such register to the registrar in compliance with the foregoing rules, or in notifying to the registrar any change that takes place in such directors or managers, such delinquent company shall incur a penalty not exceeding five pounds for every day during which such default continues, and every director and manager of the company who shall knowingly and wilfully authorise or permit such default shall incur the like penalty.

XLVII. Promissory notes and bills of exchange.—A promissory note or bill of exchange shall be deemed to have been made, accepted, or endorsed on behalf of any company under this Act, if made, accepted, or endorsed in the name of the company by any person acting under the authority of the company, or if made, accepted, or endorsed by or on behalf or on account of the company, by any person acting under the authority of the company.

XLVIII. Prohibition against carrying on business with less than seven members.—If any company under this Act carries on business when the number of its members is less than seven for a period of six months after the number has been so reduced, every person who is a member of such company during the time that it so carries on business after such period of six months, and is cognisant of the fact that it is so carrying on business with fewer than seven members, shall be severally liable for the payment of the whole debts of the company contracted during such time, and may be sued for the same, without the joinder in the action or suit of any other member.

Provisions for protection of Members.

XLIX. General meeting of company.—A general meeting of every company under this Act shall be held once at the least in every year.

L. Power to alter regulations by special resolution.—Subject to the provisions of this Act, and to the conditions contained in the memorandum of association, any company formed under this Act may, in general meeting, from time to time, by passing a special resolution in manner hereinafter mentioned, alter all or any of the regulations of the company contained in the articles of association or in the table marked A in the first schedule, where such table is applicable to the company, or make new regulations to the exclusion of or in addition to all or any of the regulations of the company; and any regulations so made by special resolution shall be deemed to be regulations of the company of the same validity as if they had been originally contained in the articles of association, and shall be subject in like manner to be altered or modified by any subsequent special resolution.

LI. Definition of special resolution.—A resolution passed by a company under this Act shall be deemed to be special whenever a resolution has been passed by a majority of not less than three-fourths of such members of the company

* The words "and not having a capital divided into shares," in §§ 45 and 46, repealed 63 and 64 Vict. c. 48, § 20 (1901).

for the time being entitled, according to the regulations of the company, to vote as may be present, in person or by proxy (in cases where by the regulations of the company proxies are allowed), at any general meeting of which notice specifying the intention to propose such resolution has been duly given, and such resolution has been confirmed by a majority of such members for the time being entitled, according to the regulations of the company, to vote as may be present, in person or by proxy, at a subsequent general meeting, of which notice has been duly given, and held at an interval of not less than fourteen days, nor more than one month from the date of the meeting at which such resolution was first passed: At any meeting mentioned in this section, unless a poll is demanded by at least five members, a declaration of the chairman that the resolution has been carried shall be deemed conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against the same: Notice of any meeting shall, for the purposes of this section, be deemed to be duly given, and the meeting to be duly held, whenever such notice is given and meeting held in manner prescribed by the regulations of the company: In computing the majority under this section, when a poll is demanded, reference shall be had to the number of votes to which each member is entitled by the regulations of the company.

LII. Provision where no regulations as to meetings.—In default of any regulations as to voting every member shall have one vote, and in default of any regulations as to summoning general meetings a meeting shall be held to be duly summoned of which seven days' notice in writing has been served on every member in manner in which notices are required to be served by the table marked A in the first schedule hereto, and in default of any regulations as to the persons to summon meetings, five members shall be competent to summon the same, and in default of any regulations as to who is to be chairman of such meeting, it shall be competent for any person elected by the members present to preside.

LIII. Registry of special resolutions.—A copy of any special resolution that is passed by any company under this Act shall be printed and forwarded to the registrar of joint stock companies, and be recorded by him: If such copy is not so forwarded within fifteen days from the date of the confirmation of the resolution, the company shall incur a penalty not exceeding two pounds for every day after the expiration of such fifteen days during which such copy is omitted to be forwarded, and every director and manager of the company who shall knowingly and wilfully authorise or permit such default shall incur the like penalty.

LIV. Copies of special resolution.—Where articles of association have been registered, a copy of every special resolution for the time being in force shall be annexed to or embodied in every copy of the articles of association that may be issued after the passing of such resolution: Where no articles of association have been

registered, a copy of any special resolution shall be forwarded in print to any member requesting the same, on payment of one shilling, or such less sum as the company may direct: And if any company makes default in complying with the provisions of this section it shall incur a penalty not exceeding one pound for each copy in respect of which such default is made; and every director and manager of the company who shall knowingly and wilfully authorise or permit such default shall incur the like penalty.

LV. Execution of deeds abroad.—Any company under this Act may, by instrument in writing under its common seal, empower any person, either generally or in respect of any specified matters, as its attorney, to execute deeds on its behalf in any place not situate in the United Kingdom; and every deed signed by such attorney, on behalf of the company, and under his seal, shall be binding on the company, and have the same effect as if it were under the common seal of the company.

LVI. Examination of affairs of company by inspectors.—The Board of Trade may appoint one or more competent inspectors to examine into the affairs of any company under this Act, and to report thereon, in such manner as the Board may direct, upon the applications following; (that is to say,)

- (1.) In the case of a banking company that has a capital divided into shares, upon the application of members holding not less than one-third part of the whole shares of the company for the time being issued:
- (2.) In the case of any other company that has a capital divided into shares, upon the application of members holding not less than one-fifth part of the whole shares of the company for the time being issued:
- (3.) In the case of any company not having a capital divided into shares, upon the application of members being in number not less than one-fifth of the whole number of persons for the time being entered on the register of the company as members.

LVII. Application for inspection to be supported by evidence.—The application shall be supported by such evidence as the Board of Trade may require for the purpose of showing that the applicants have good reason for requiring such investigation to be made, and that they are not actuated by malicious motives in instituting the same; the Board of Trade may also require the applicants to give security for payment of the costs of the inquiry before appointing any inspector or inspectors.

LVIII. Inspection of books.—It shall be the duty of all officers and agents of the company to produce for the examination of the inspectors all books and documents in their custody or power: Any inspector may examine upon oath the officers and agents of the company in relation to its business, and may administer such oath accordingly: If any officer or agent refuses to produce any book or document hereby directed to be produced, or to answer any question relat-

ing to the affairs of the company, he shall incur a penalty not exceeding five pounds in respect of each offence.

LIX. Result of examination, how dealt with.—Upon the conclusion of the examination the Board of Trade shall report their opinion to the Board of Trade: Such report shall be written or printed, as the Board of Trade directs: A copy shall be forwarded by the Board of Trade to the registered office of the company, and a further copy shall, at the request of the members upon whose application the inspection was made, be delivered to them or to any one or more of them: All expenses of and incidental to any such examination as aforesaid shall be defrayed by the members upon whose application the inspectors were appointed, unless the Board of Trade shall direct the same to be paid out of the assets of the company, which it is hereby authorised to do.

LX. Power of company to appoint inspectors.—Any company under this Act may by special resolution appoint inspectors for the purpose of examining into the affairs of the company: The inspectors so appointed shall have the same powers and perform the same duties as inspectors appointed by the Board of Trade, with this exception, that, instead of making their report to the Board of Trade, they shall make the same in such manner and to such persons as the company in general meeting directs; and the officers and agents of the company shall incur the same penalties, in case of any refusal to produce any book or document hereby required to be produced to such inspectors, or to answer any question, as they would have incurred if such inspector had been appointed by the Board of Trade.

LXI. Report of inspectors to be evidence.—A copy of the report of any inspectors appointed under this Act, authenticated by the seal of the company into whose affairs they have made inspection, shall be admissible in any legal proceeding, as evidence of the opinion of the inspectors in relation to any matter contained in such report.

Notices.

LXII. Service of notices on company.—Any summons, notice, order, or other document required to be served upon the company may be served by leaving the same, or sending it through the post in a prepaid letter addressed to the company, at their registered office.

LXIII. Rules as to notices by letter.—Any document to be served by post on the company shall be posted in such time as to admit of its being delivered in the due course of delivery within the period (if any) prescribed for the service thereof, and in proving service of such document it shall be sufficient to prove that such document was properly directed, and that it was put as a prepaid letter into the post office.

LXIV. Authentication of notices of company.—Any summons, notice, order, or proceeding requiring authentication by the company, may be signed by any director, secretary, or other

authorised officer of the company, and need not be under the common seal of the company, and the same may be in writing or in print, or partly in writing and partly in print.

Legal Proceedings.

LXV. Recovery of penalties.—All offences under this Act made punishable by any penalty may be prosecuted summarily before two or more justices, as to England, in manner directed by an Act passed in the session holden in the eleventh and twelfth years of the reign of Her Majesty Queen Victoria, chapter forty-three, intituled "An Act to facilitate the performance of the Duties of Justices of the Peace out of Sessions within England and Wales with respect to Summary Convictions and Orders," or any Act amending the same; and as to Scotland, before two or more justices or the sheriff of the county, in manner directed by the Act passed in the session of Parliament holden in the seventeenth and eighteenth years of the reign of Her Majesty Queen Victoria, chapter one hundred and four, intituled "An Act to amend and consolidate the Acts relating to Merchant Shipping," or any Act amending the same, as regards offences in Scotland against that Act, not being offences by that Act described as felonies or misdemeanors; and as to Ireland, in manner directed by the Act passed in the session holden in the fourteenth and fifteenth years of the reign of Her Majesty Queen Victoria, chapter ninety-three, intituled "An Act to consolidate and amend the Acts regulating the Proceedings of Petty Sessions and the Duties of Justices of the Peace out of Quarter Sessions in Ireland," or any Act amending the same.

LXVI. Application of penalties.—The justices or sheriff imposing any penalty under this Act may direct the whole or any part thereof to be applied in or towards payment of the costs of the proceedings, or in or towards the rewarding the person upon whose information or at whose suit such penalty has been recovered; and, subject to such direction, all penalties shall be paid into the receipt of Her Majesty's Exchequer, in such manner as the Treasury may direct, and shall be carried to and form part of the Consolidated Fund of the United Kingdom.

LXVII. Evidence of proceedings at meetings.—Every company under this Act shall cause minutes of all resolutions and proceedings of general meetings of the company, and of the directors or managers of the company in cases where there are directors or managers, to be duly entered in books to be from time to time provided for the purpose; and any such minute as aforesaid, if purporting to be signed by the chairman of the meeting at which such resolutions were passed or proceedings had, or by the chairman of the next succeeding meeting, shall be received as evidence in all legal proceedings; and until the contrary is proved, every general meeting of the company or meeting of directors or managers in respect of the proceedings of which minutes have been so made shall be deemed to have been duly held and convened, and all resolutions passed thereat or proceedings had, to have been duly passed and had, and all

appointments of directors, managers, or liquidators shall be deemed to be valid, and all acts done by such directors, managers, or liquidators shall be valid, notwithstanding any defect that may afterwards be discovered in their appointments or qualifications.

LXVIII. Jurisdiction of Vice-Warden of Stannaries.—In the case of companies under this Act, and engaged in working mines within and subject to the jurisdiction of the stannaries, the Court of the Vice-Warden of the Stannaries shall have and exercise the like jurisdiction and powers, as well on the common law as on the equity side thereof, which it now possesses by custom, usage, or statute in the case of unincorporated companies, but only so far as such jurisdiction or powers are consistent with the provisions of this Act and with the constitution of companies as prescribed or required by this Act; and for the purpose of giving fuller effect to such jurisdiction in all actions, suits, or legal proceedings instituted in the said court, in causes or matters whereof the court has cognisance, all process issuing out of the same, and all orders, rules, demands, notices, warrants, and summonses required or authorised by the practice of the court to be served on any company, whether registered or not registered, or any member or contributory thereof, or any officer, agent, director, manager, or servant thereof, may be served in any part of England without any special order of the Vice-Warden for that purpose, or by such special order may be served in any part of the United Kingdom of Great Britain and Ireland, or in the adjacent islands, parcel of the dominions of the Crown, on such terms and conditions as the court shall think fit; and all decrees, orders, and judgments of the said court made or pronounced in such causes or matters may be enforced in the same manner in which decrees, orders, and judgments of the court may now by law be enforced, whether within or beyond the local limits of the stannaries; and the seal of the said court, and the signature of the registrar thereof, shall be judicially noticed by all other courts and judges in England, and shall require no other proof than the production thereof: The registrar of the said court or the assistant registrar, in making sales under any decree or order of the court shall be entitled to the same privilege of selling by auction or competition without a license, and without being liable to duty, as a judge of the Court of Chancery is entitled to in pursuance of the acts in that behalf.*

LXIX. Provision as to costs in actions brought by certain limited companies.—Where a limited company is plaintiff or pursuer in any action, suit, or other legal proceeding, any judge having jurisdiction in the matter may, if it appears by any credible testimony that there is reason to believe that if the defendant be successful in his defence the assets of the company will be insufficient to pay his costs, require sufficient security to be given for such costs, and may stay all proceedings until such security is given.

LXX. Declaration in action against members.—In any action or suit brought by the company against any member to recover any call or other

monies due from such member in his character of member, it shall not be necessary to set forth the special matter, but it shall be sufficient to allege that the defendant is a member of the company, and is indebted to the company in respect of a call made or other monies due whereby an action or suit hath accrued to the company.

Alteration of Forms.

LXXI. Board of Trade may alter forms in schedule hereto.—The forms set forth in the second schedule hereto, or forms as near thereto as circumstances admit, shall be used in all matters to which such forms refer; the Board of Trade may from time to time make such alterations in the tables and forms contained in the first schedule hereto, so that it does not increase the amount of fees payable to the registrar in the said schedule mentioned, and in the forms in the second schedule, or make such additions to the last-mentioned forms as it deems requisite: Any such table or form, when altered, shall be published in the *London Gazette*, and upon such publication being made such table or form shall have the same force as if it were included in the schedule to this Act, but no alteration made by the Board of Trade in the table marked A contained in the first schedule shall affect any company registered prior to the date of such alteration, or repeal, as respects such company, any portion of such table.

Arbitrations.

LXXII. Power for companies to refer matters to arbitration.—Any company under this Act may from time to time, by writing under its common seal, agree to refer and may refer to arbitration, in accordance with "The Railway Companies Arbitration Act, 1859," any existing or future difference, question, or other matter whatsoever in dispute between itself and any other company or person, and the companies' parties to the arbitration may delegate to the person or persons to whom the reference is made power to settle any terms or to determine any matter capable of being lawfully settled or determined by the companies themselves, or by the directors or other managing body of such companies.

LXXIII. Provisions of 22 and 23 Vict., c. 59, to apply.—All the provisions of "The Railway Companies Arbitration Act, 1859," shall be deemed to apply to arbitrations between companies and persons in pursuance of this Act; and in the construction of such provisions "the companies" shall be deemed to include companies authorised by this Act to refer disputes to arbitration.

PART IV.

WINDING UP OF COMPANIES AND ASSOCIATIONS UNDER THIS ACT.

Preliminary.

LXXIV. Meaning of contributory.—The term "contributory" shall mean every person liable to contribute to the assets of a company under this Act, in the event of the same being wound up: It shall also, in all proceedings for deter-

* Court of the Vice-Warden of the Stannaries abolished, 59 and 60 Vict., c. 45.

mining the persons who are to be deemed contributories, and in all proceedings prior to the final determination of such persons, include any person alleged to be a contributory.

LXXV. Nature of liability of contributory.—The liability of any person to contribute to the assets of a company under this Act in the event of the same being wound up, shall be deemed to create a debt (in England and Ireland of the nature of a specialty) accruing due from such person at the time when his liability commenced, but payable at the time or respective times when calls are made as herein-after mentioned for enforcing such liability; and it shall be lawful in the case of the bankruptcy of any contributory to prove against his estate the estimated value of his liability to future calls, as well as calls already made.

LXXVI. Contributories in case of death.—If any contributory dies either before or after he has been placed on the list of contributories herein-after mentioned, his personal representatives, heirs, and devisees shall be liable in a due course of administration to contribute to the assets of the company in discharge of the liability of such deceased contributory, and such personal representatives, heirs, and devisees shall be deemed to be contributories accordingly.

LXXVII. Contributories in case of bankruptcy.—If any contributory becomes bankrupt, either before or after he has been placed on the list of contributories, his assignees shall be deemed to represent such bankrupt for all the purposes of the winding up, and shall be deemed to be contributories accordingly, and may be called upon to admit to proof against the estate of such bankrupt, or otherwise to allow to be paid out of his assets in due course of law, any monies due from such bankrupt in respect of his liability to contribute to the assets of the company being wound up, and for the purposes of this section any person who may have taken the benefit of any Act for the relief of insolvent debtors before the eleventh day of October one thousand eight hundred and sixty-one shall be deemed to have become bankrupt.

LXXVIII. Contributories in case of marriage.—If any female contributory marries, either before or after she has been placed on the list of contributories, her husband shall during the continuance of the marriage be liable to contribute to the assets of the company the same sum as she would have been liable to contribute if she had not married, and he shall be deemed to be a contributory accordingly.*

Winding up by Court.

LXXIX. Circumstances under which company may be wound up by court.—A company under this Act may be wound up by the court as herein-after defined, under the following circumstances; (that is to say,)

- (1.) Whenever the company has passed a special resolution requiring the company to be wound up by the court:
- (2.) Whenever the company does not commence its business within a year from its incor-

poration, or suspends its business for the space of a whole year:

- (3.) Whenever the members are reduced in number to less than seven:
- (4.) Whenever the company is unable to pay its debts:
- (5.) Whenever the court is of opinion that it is just and equitable that the company should be wound up.

LXXX. Company, when deemed unable to pay its debts.—A company under this Act shall be deemed unable to pay its debts—

- (1.) Whenever a creditor, by assignment or otherwise, to whom the company is indebted, at law or in equity, in a sum exceeding fifty pounds then due, has served on the company, by leaving the same at their registered office, a demand under his hand requiring the company to pay the sum so due, and the company has for the space of three weeks succeeding the service of such demand neglected to pay such sum, or to secure or compound for the same to the reasonable satisfaction of the creditor:
- (2.) Whenever, in England and Ireland, execution or other process issued on a judgment decree, or order obtained in any court in favour of any creditor, at law or in equity, in any proceeding instituted by such creditor against the company, is returned unsatisfied in whole or in part:
- (3.) Whenever, in Scotland, the induciæ of a charge for payment on an extract decree, or an extract registered bond, or an extract registered protest have expired without payment being made:
- (4.) Whenever it is proved to the satisfaction of the court that the company is unable to pay its debts.

LXXXI. Definition of "the court."—The expression "the court," as used in this part of this Act, shall mean the following authorities; (that is to say,)

In the case of a company engaged in working any mine within and subject to the jurisdiction of the stannaries,—the Court of the Vice-Warden in the Stannaries, unless the Vice-Warden certifies that in his opinion the company would be more advantageously wound up in the High Court of Chancery, in which case "the court" shall mean the High Court of Chancery:

In the case of a company registered in England that is not engaged in working any such mine as aforesaid,—the High Court of Chancery:

In the case of a company registered in Ireland, the Court of Chancery in Ireland:

In all cases of companies registered in Scotland, the Court of Session in either division thereof:

Provided that where the Court of Chancery in

Repealed 1893.

1893.

* See the Married Women's Property Acts, 1877 and 1881.

England or Ireland makes an order for winding up a company under this Act, it may, if it thinks fit, direct all subsequent proceedings for winding up the same to be had in the court of bankruptcy having jurisdiction in the place in which the registered office of the company is situate; and thereupon such last-mentioned court of bankruptcy shall, for the purposes of winding up the company, be deemed to be "the court" within the meaning of the Act, and shall have for the purposes of such winding up all the powers of the High Court of Chancery, or of the Court of Chancery in Ireland, as the case may require.*

LXXXII. Application for winding up to be made by petition.—Any application to the court for the winding up of a company under this Act shall be by petition; it may be presented by the company, or by any one or more creditor or creditors, contributory or contributories of the company, or by all or any of the above parties, together or separately; and every order which may be made on any such petition shall operate in favour of all the creditors and all the contributories of the company in the same manner as if it had been made upon the joint petition of a creditor and a contributory.

LXXXIII. Power of court.—Any judge of the High Court of Chancery may do in chambers any act which the court is hereby authorised to do; and the Vice-Warden of the Stannaries may direct that a petition for winding up a company be heard by him at such time and at such place within the jurisdiction of the stannaries, or within or near to the place where the registered office of the company is situated, as he may deem to be convenient to the parties concerned, or (with the consent of the parties concerned) at any place in England; and all orders made thereon shall have the same force and effect as if they had been made by the Vice-Warden sitting at Truro or elsewhere within the jurisdiction of the court, and all parties and persons summoned to attend at the hearing of any such petition shall be compellable to give their attendance before the Vice-Warden by like process and in like manner as at the hearing of any cause or matter at the usual sitting of the said court, and the registrar of the court may, subject to exception or appeal to the Vice-Warden as heretofore used, do and exercise such and the like acts and powers in the matter of winding up as he is now used to do and exercise in a suit on the equity side of the said court.

LXXXIV. Commencement of winding up by court.—A winding up of a company by the court shall be deemed to commence at the time of the presentation of the petition for the winding up.

LXXXV. Court may grant injunction.—The court may, at any time after the presentation of a petition for winding up a company under this Act, and before making an order for winding up the company, upon the application of the company, or of any creditor or contributory of the company, restrain further proceedings in any action, suit, or proceeding against the company, upon such terms as the court thinks fit; the court may also at any time after the presentation of such petition, and before the first appointment

of liquidators, appoint provisionally an official liquidator of the estate and effects of the company.

LXXXVI. Course to be pursued by court on hearing petition.—Upon hearing the petition the court may dismiss the same with or without costs, may adjourn the hearing conditionally or unconditionally, and may make any interim order or any other order that it deems just.

LXXXVII. Actions and suits to be stayed after order for winding up.—When an order has been made for winding up a company under this Act, no suit, action, or other proceeding shall be proceeded with or commenced against the company except with the leave of the court, and subject to such terms as the court may impose.

LXXXVIII. Copy of order to be forwarded to registrar.—When an order has been made for winding up a company under this Act, a copy of such order shall forthwith be forwarded by the company to the registrar of joint stock companies, who shall make a minute thereof in his books relating to the company.

LXXXIX. Power of court to stay proceedings.—The court may at any time after an order has been made for winding up a company, upon the application by motion of any creditor or contributory of the company, and upon proof to the satisfaction of the court that all proceedings in relation to such winding up ought to be stayed, make an order staying the same, either altogether or for a limited time, on such terms and subject to such conditions as it deems fit.

XC. Effect of order on share capital of company limited by guarantee.—When an order has been made for winding up a company limited by guarantee and having a capital divided into shares, any share capital that may not have been called up shall be deemed to be assets of the company, and to be a debt (in England and Ireland of the nature of a specialty) due to the company from each member to the extent of any sums that may be unpaid on any shares held by him, and payable at such time as may be appointed by the court.

XCI. Court may have regard to wishes of creditors or contributories.—The court may, as to all matters relating to the winding up, have regard to the wishes of the creditors or contributories, as proved to it by any sufficient evidence, and may, if it thinks it expedient, direct meetings of the creditors or contributories to be summoned, held, and conducted in such manner as the court directs, for the purpose of ascertaining their wishes, and may appoint a person to act as chairman of any such meeting, and to report the result of such meeting to the court: In the case of creditors, regard is to be had to the value of the debts due to each creditor, and in the case of contributories to the number of votes conferred on each contributory by the regulations of the company.

Official Liquidators.

XCII. Appointment of official liquidator.—For the purpose of conducting the proceedings in

* Section 81 repealed as to England, 1890.

§ 81. The words, "England or," on the first line, and "of the High Court of Chancery or," and "as the case may require," repealed, Statute Law Revision Act, 1893.

winding up a company, and assisting the court therein, there may be appointed a person or persons to be called an official liquidator or official liquidators; and the court having jurisdiction may appoint such person or persons, either provisionally or otherwise, as it thinks fit, to the office of official liquidator or official liquidators; in all cases if more persons than one are appointed to the office of official liquidator, the court shall declare whether any Act hereby required or authorised to be done by the official liquidator is to be done by all or any one or more of such persons. The court may also determine whether any and what security is to be given by any official liquidator on his appointment; if no official liquidator is appointed, or during any vacancy in such appointment, all the property of the company shall be deemed to be in the custody of the court.*

XCIII. Resignations, removals, filling up vacancies and compensation.—Any official liquidator may resign or be removed by the court on due cause shown: And any vacancy in the office of an official liquidator appointed by the court shall be filled by the court: There shall be paid to the official liquidator such salary or remuneration, by way of per-centage or otherwise, as the court may direct; and if more liquidators than one are appointed such remuneration shall be distributed amongst them in such proportions as the court directs.

XCIV. Style and duties of official liquidator.—The official liquidator or liquidators shall be described by the style of the official liquidator or official liquidators of the particular company in respect of which he is or they are appointed, and not by his or their individual name or names; he or they shall take into his or their custody, or under his or their control, all the property, effects, and things in actions to which the company is or appears to be entitled, and shall perform such duties in reference to the winding up of the company as may be imposed by the court.

XCV. Powers of official liquidator.—The official liquidator shall have power, with the sanction of the court, to do the following things:

To bring or defend any action, suit, or prosecution, or other legal proceeding, civil or criminal, in the name and on behalf of the company:

To carry on the business of the company, so far as may be necessary for the beneficial winding up of the same:

To sell the real and personal and heritable and moveable property, effects, and things in action of the company by public auction or private contract, with power to transfer the whole thereof to any person or company, or to sell the same in parcels:

To do all acts and to execute, in the name and on behalf of the company, all deeds, receipts, and other documents, and for that purpose to use, when necessary, the company's seal:

To prove, rank, claim, and draw a dividend, in the matter of the bankruptcy or insolvency

or sequestration of any contributory, for any balance against the estate of such contributory, and to take and receive dividends in respect of such balance, in the matter of bankruptcy or insolvency or sequestration, as a separate debt due from such bankrupt or insolvent, and rateably with the other separate creditors:

To draw, accept, make, and endorse any bill of exchange or promissory note in the name and on behalf of the company,

also to raise upon the security of the assets of the company from time to time any requisite sum or sums of money; and the drawing, accepting, making, or endorsing of every such bill of exchange or promissory note as aforesaid on behalf of the company shall have the same effect with respect to the liability of such company as if such bill or note had been drawn, accepted, made, or indorsed by or on behalf of such company in the course of carrying on the business thereof:

To take out, if necessary, in his official name, letters of administration to any deceased contributory, and to do in his official name any other act that may be necessary for obtaining payment of any monies due from a contributory or from his estate, and which act cannot be conveniently done in the name of the company; and in all cases where he takes out letters of administration, or otherwise uses his official name for obtaining payment of any monies due from a contributory, such monies shall for the purpose of enabling him to take out such letters or recover such monies, be deemed to be due to the official liquidator himself:

To do and execute all such other things as may be necessary for winding up the affairs of the company and distributing its assets.

XCVI. Discretion of official liquidator.—The court may provide by any order that the official liquidator may exercise any of the above powers without the sanction or intervention of the court, and where an official liquidator is provisionally appointed may limit and restrict his powers by the order appointing him.

XCVII. Appointment of solicitor to official liquidator.—The official liquidator may, with the sanction of the court, appoint a solicitor or law agent to assist him in the performance of his duties.†

Ordinary powers of Court.

XCVIII. Collection and application of assets.—As soon as may be after making an order for winding up the company, the court shall settle a list of contributories, with power to rectify the register of members in all cases where such rectification is required in pursuance of this Act, and shall cause the assets of the company to be collected, and applied in discharge of its liabilities.

XCIX. Provision as to representative contributories.—In settling the list of contributories the

* Repealed in part as to England, 1890.

† Repealed as to England, 1890.

court shall distinguish between persons who are contributories in their own right and persons who are contributories as being representatives of or being liable to the debts of others; it shall not be necessary, where the personal representative of any deceased contributory is placed on the list, to add the heirs or devisees of such contributory, nevertheless such heirs or devisees may be added as and when the court thinks fit.

C. Power of court to require delivery of property.—The court may, at any time after making an order for winding up a company, require any contributory for the time being settled on the list of contributories, trustee, receiver, banker, or agent, or officer of the company to pay, deliver, convey, surrender, or transfer forthwith, or within such time as the court directs, to or into the hands of the official liquidator, any sum or balance, books, papers, estate, or effects which happen to be in his hands for the time being, and to which the company is *prima facie* entitled.

CI. Power of court to order payment of debts by contributory.—The court may, at any time after making an order for winding up the company, make an order on any contributory for the time being settled on the list of contributories, directing payment to be made, in manner in the said order mentioned, of any monies due from him or from the estate of the person whom he represents to the company, exclusive of any monies which he or the estate of the person whom he represents may be liable to contribute by virtue of any call made or to be made by the court in pursuance of this part of this Act; and it may, in making such order, when the company is not limited, allow to such contributory by way of set-off any monies due to him or the estate which he represents from the company on any independent dealing or contract with the company, but not any monies due to him as a member of the company in respect of any dividend or profit:

Provided that when all the creditors of any company whether limited or unlimited are paid in full, any monies due on any account whatever to any contributory from the company may be allowed to him by way of set-off against any subsequent call or calls.

CII. Power of court to make calls.—The court may, at any time after making an order for winding up a company, and either before or after it has ascertained the sufficiency of the assets of the company, make calls on and order payment thereof by all or any of the contributories for the time being settled on the list of contributories, to the extent of their liability, for payment of all or any sums it deems necessary to satisfy the debts and liabilities of the company, and the costs, charges, and expenses of winding it up, and for the adjustment of the rights of the contributories amongst themselves, and it may, in making a call, take into consideration the probability that some of the contributories upon whom the same is made may partly or wholly fail to pay their respective portions of the same.

CIII. Power of court to order payment into

bank.—The court may order any contributory, purchaser, or other person from whom money is due to the company to pay the same into the Bank of England or any branch thereof to the account of the official liquidator instead of to the official liquidator, and such order may be enforced in the same manner as if it had directed payment to the official liquidator.

CIV. Regulation of account with court.—All monies, bills, notes, and other securities paid and delivered into the Bank of England or any branch thereof, in the event of a company being wound up by the court, shall be subject to such order and regulation for the keeping of the account of such monies and other effects, and for the payment and delivery in or investment and payment and delivery out of the same as the court may direct.

CV. Provision in case of representative contributory not paying monies ordered.—If any person made a contributory as personal representative of a deceased contributory makes default in paying any sum ordered to be paid by him, proceedings may be taken for administering the personal and real estates of such deceased contributory, or either of such estates, and of compelling payment thereof of the monies due.

CVI. Order conclusive evidence.—Any order made by the court in pursuance of this Act upon any contributory shall, subject to the provisions herein contained for appealing against such order, be conclusive evidence that the monies, if any, thereby appearing to be due or ordered to be paid are due, and all other pertinent matters stated in such order are to be taken to be truly stated as against all persons, and in all proceedings whatsoever, with the exception of proceedings taken against the real estate of any deceased contributory, in which case such order shall only be *prima facie* evidence for the purpose of charging his real estate, unless his heirs or devisees were on the list of contributories at the time of the order being made.

CVII. Court may exclude creditors not proving within certain time.—The court may fix a certain day or certain days on or within which creditors of the company are to prove their debts or claims, or to be excluded from the benefit of any distribution made before such debts are proved.

CVIII. Proceedings in the Court of Vice-Warden of the Stannaries on proof of debts.—If in the course of proving the debts and claims of creditors in the Court of the Vice-Warden of the Stannaries any debt or claim is disputed by the official liquidator or by any creditor or contributory, or appears to the court to be open to question, the court shall have power, subject to appeal as herein-after provided, to adjudicate upon it, and for that purpose the said court shall have and exercise all needful powers of inquiry touching the same by affidavit or by oral examination of witnesses or of parties, whether voluntarily offering themselves for examination or summoned to attend by compulsory process of the court, or to produce documents before the court, and the court shall also have power, incidentally, to decide on the validity and extent of

Repealed 1896.

any lien or charge claimed by any creditor on any property of the company in respect of such debt, and to make declarations of right, binding on all persons interested; and for the more satisfactory determination of any question of fact, or mixed question of law and fact arising on such inquiry, the vice-warden shall have power, if he thinks fit, to direct and settle any action or issue to be tried either on the common law side of his court, or by a common or special jury, before the justices of assize in and for the counties of Cornwall or Devon, or at any sitting of one of the superior courts in London or Middlesex, which action or issue shall accordingly be tried in due course of law, and without other or further consent of parties; and the finding of the jury in such action or issue shall be conclusive of the facts found, unless the judge who tried it makes known to the vice-warden that he was not satisfied with the finding, or unless it appears to the vice-warden that, in consequence of miscarriage, accident, or the subsequent discovery of fresh material evidence, such finding ought not to be conclusive.

CIX. Court to adjust rights of contributories.—The court shall adjust the rights of the contributories amongst themselves, and distribute any surplus that may remain amongst the parties entitled thereto.

CX. Court to order costs.—The court may, in the event of the assets being insufficient to satisfy the liabilities, make an order as to the payment out of the estate of the company of the costs, charges, and expenses incurred in winding up any company in such order of priority as the court thinks just.

CXI. Dissolution of company.—When the affairs of the company have been completely wound up the court shall make an order that the company be dissolved from the date of such order, and the company shall be dissolved accordingly.

CXII. Registrar to make minute of dissolution of company.—Any order so made shall be reported by the official liquidator to the registrar, who shall make a minute accordingly in his books of the dissolution of such company.

CXIII. Penalty on not reporting dissolution of company.—If the official liquidator makes default in reporting to the registrar, in the case of a company being wound up by the court, the order that the company be dissolved, he shall be liable to a penalty not exceeding five pounds for every day during which he is so in default.

Repealed 1867.

CXIV. Petition to be *lis pendens*.—Any petition for winding up a company by the court under this Act shall constitute a *lis pendens* within the terms of the Act passed in the session holden in the second and third years of the reign of Her present Majesty, chapter eleven, and intitled "An Act for the better Protection of Purchasers against Judgments, Crown Debts, *Lis pendens*, and Flats in Bankruptcy," provided the same is duly registered in manner required by such Act concerning suits in equity.

Extraordinary Powers of Court.

CXV. Power of court to summon persons before it, suspected of having property of company.—The court may, after it has made an order for winding up the company, summon before it any officer of the company or person known or suspected to have in his possession any of the estate or effects of the company, or supposed to be indebted to the company, or any person whom the court may deem capable of giving information concerning the trade, dealings, estate, or effects of the company; and the court may require any such officer or person to produce any books, papers, deeds, writings, or other documents in his custody or power relating to the company; and if any person so summoned, after being tendered a reasonable sum for his expenses, refuses to come before the court at the time appointed, having no lawful impediment (made known to the court at the time of its sitting, and allowed by it), the court may cause such person to be apprehended, and brought before the court for examination; nevertheless, in cases where any person claims any lien on papers, deeds, or writings or documents produced by him, such production shall be without prejudice to such lien, and the court shall have jurisdiction in the winding up to determine all questions relating to such lien.

CXVI. Special provisions as to Court of Vice-Warden of the Stannaries.—If, after an order for winding up in the court of the Vice-Warden of the Stannaries, it appears that any person claims property in, or any lien, legal or equitable, upon any of the machinery, materials, ores, or effects on the mine, or on premises occupied by the company in connection with the mine, or to which the company was, at the time of the order, *prima facie* entitled, it shall be lawful for the vice-warden or the registrar to adjudicate upon such claim on interpleader in the manner provided by section eleven of the Act passed in the eighteenth year of the reign of Her present Majesty, chapter thirty-two; and any action or issue directed upon such interpleader may, if the vice-warden think fit, be tried in his court or at the assizes or the sittings in London or Middlesex, before a judge of one of the superior courts, in the manner and on the terms and conditions herein-before provided in the case of disputed debts and claims of creditors.

CXVII. Examination of parties by court.—The court may examine upon oath, either by word of mouth or upon written interrogatories, any person appearing or brought before them in manner aforesaid concerning the affairs, dealings, estate, or effects of the company, and may reduce into writing the answers of every such person, and require him to subscribe the same.

CXVIII. Power to arrest contributory about to abscond, or to remove or conceal any of his property.—The court may, at any time before or after it has made an order for winding up a company, upon proof being given that there is probable cause for believing that any contributory to such company is about to quit the United Kingdom, or otherwise abscond, or to remove or conceal any of his goods or chattels, for the purpose of

Repealed 1896.

evading payment of calls, or for avoiding examination in respect of the affairs of the company, cause such contributory to be arrested, and his books, papers, monies, securities for monies, goods, and chattels to be seized, and him and them to be safely kept until such time as the court may order.

CXIX. Powers of court cumulative.—Any powers by this Act conferred on the court shall be deemed to be in addition to and not in restriction of any other powers subsisting, either at law or in equity, of instituting proceedings against any contributory, or the estate of any contributory, or against any debtor of the company for the recovery of any call or other sums due from such contributory or debtor, or his estate, and such proceedings may be instituted accordingly.

Enforcement of and Appeal from Orders.

CXX. Power to enforce orders.—All orders made by the Court of Chancery in England or Ireland under this Act may be enforced in the same manner in which orders of such Court of Chancery made in any suit pending therein may be enforced, and for the purposes of this part of this Act the Court of the Vice-Warden of the Stannaries shall, in addition to its ordinary powers, have the same power of enforcing any orders made by it as the Court of Chancery in England has in relation to matters within the jurisdiction of such court, and for the last-mentioned purposes the jurisdiction of the Vice-Warden of the Stannaries shall be deemed to be co-extensive in local limits with the jurisdiction of the Court of Chancery in England.

CXXI. Power to order contributories in Scotland to pay calls.—When an order, interlocutor, or decree has been made in Scotland for winding up a company by the court, it shall be competent to the court in Scotland during session, and to the Lord Ordinary on the Bills during vacation, on production by the liquidators of a list certified by them of the names of the contributories liable in payment of any calls which they may wish to enforce, and of the amount due by each contributory respectively, and of the date when the same became due, to pronounce forthwith a decree against such contributories for payment of the sums so certified to be due by each of them respectively, with interest from the said date till payment, at the rate of five pounds per centum per annum, in the same way and to the same effect as if they had severally consented to registration for execution, on a charge of six days, of a legal obligation to pay such calls and interest; and such decree may be extracted immediately, and no suspension thereof shall be competent, except on caution or consignation, unless with special leave of the court or Lord Ordinary.

CXXII. Order made in England to be enforced in Ireland and Scotland.—Any order made by the court in England for or in the course of the winding up of a company under this Act shall be enforced in Scotland and Ireland in the courts that would respectively have had jurisdiction in respect of such company if the registered office

of the company had been situate in Scotland or Ireland, and in the same manner in all respects as if such order had been made by the courts that are hereby required to enforce the same; and in like manner orders, interlocutors, and decrees made by the court in Scotland for or in the course of the winding up of a company shall be enforced in England and Ireland, and orders made by the court in Ireland for or in the course of winding up a company shall be enforced in England and Scotland by the courts which would respectively have had jurisdiction in the matter of such company if the registered office of the company were situate in the division of the United Kingdom where the order is required to be enforced, and in the same manner in all respects as if such order had been made by the court required to enforce the same in the case of a company within its own jurisdiction.

CXXIII.—Mode of dealing with orders to be enforced by other courts.—Where any order, interlocutor, or decree made by one court is required to be enforced by another court, as herein-before provided, an office copy of the order, interlocutor, or decree so made shall be produced to the proper officer of the court required to enforce the same, and the production of such office copy shall be sufficient evidence of such order, interlocutor, or decree having been made, and thereupon such last-mentioned court shall take such steps in the matter as may be requisite for enforcing such order, interlocutor, or decree, in the same manner as if it were the order, interlocutor, or decree of the court enforcing the same.

CXXIV. Appeals from orders.—Rehearings of and appeals from any order or decision made or given in the matter of the winding up of a company by any court having jurisdiction under this Act, may be had in the same manner and subject to the same conditions in and subject to which appeals may be had from any order or decision of the same court in cases within its ordinary jurisdiction; subject to this restriction, that no such rehearing or appeal shall be heard unless notice of the same is given within three weeks after any order complained of has been made, in manner in which notices of appeal are ordinarily given, according to the practice of the court appealed from, unless such time is extended by the court of appeal: Provided that it shall be lawful for the Lord Warden of the Stannaries, by a special or general order, to remit at once any appeal allowed and regularly lodged with him against any order or decision of the vice-warden made in the matter of a winding up to the court of appeal in Chancery, which court shall thereupon hear and determine such appeal, and have power to require all such certificates of the vice-warden, records of proceedings below, documents, and papers as the Lord Warden would or might have required upon the hearing of such appeal, and to exercise all other the jurisdiction and powers of the Lord Warden specified in the Act of Parliament passed in the eighteenth year of the reign of Her present Majesty, chapter thirty-two, and any order so made by the court of appeal in Chancery shall be final, without any further appeal.

CXXV. Judicial notice to be taken of signature

Repeated 1896.

of officers.—In all proceedings under this part of this Act, all courts, judges, and persons judicially acting, and all other officers, judicial or ministerial, of any court, or employed in enforcing the process of any court, shall take judicial notice of the signature of any officer of the Courts of Chancery or Bankruptcy in England or in Ireland, or of the Court of Session in Scotland, or of the registrar of the Court of the Vice-Warden of the Stannaries, and also of the official seal or stamp of the several offices of the Courts of Chancery or Bankruptcy in England or Ireland, or of the Court of Session in Scotland, or of the Court of the Vice-Warden of the Stannaries, when such seal or stamp is appended to or impressed on any document made, issued, or signed under the provisions of this part of the Act, or any official copy thereof.

CXXVI. *Special commissioners for receiving evidence.*—The commissioners of the court of bankruptcy and the judges of the county courts in England who sit at places more than twenty miles from the general post office, and the commissioners of bankrupt and the assistant barristers and recorders in Ireland and the sheriffs of counties in Scotland, shall be commissioners for the purpose of taking evidence under this Act, in cases where any company is wound up in any part of the United Kingdom, and it shall be lawful for the court to refer the whole or any part of the examination of any witnesses under this Act to any person hereby appointed commissioner, although such commissioner is out of the jurisdiction of the court that made the order or decree for winding up the company; and every such commissioner shall, in addition to any power of summoning and examining witnesses, and requiring the production or delivery of documents, and certifying or punishing defaults by witnesses, which he might lawfully exercise as a commissioner of the court of bankruptcy, judge of a county court, commissioner of bankruptcy, assistant barrister, or recorder, or as a sheriff of a county, have in the matter so referred to him all the same powers of summoning and examining witnesses, and requiring the production or delivery of documents, and punishing defaults by witnesses, and allowing costs and charges and expenses to witnesses, as the court which made the order for winding up the company has; and the examination so taken shall be returned or reported to such last-mentioned court in such manner as it directs.

CXXVII. *Court may order the examination of persons in Scotland.*—The court may direct the examination in Scotland of any person for the time being in Scotland, whether a contributory of the company or not, in regard to the estate, dealings, or affairs of any company in the course of being wound up, or in regard to the estate, dealings, or affairs of any person being a contributory of the company, so far as the company may be interested therein by reason of his being such contributory, and the order or commission to take such examination shall be directed to the sheriff of the county in which the person to be examined is residing or happens to be for the time, and the sheriff shall summon such person to appear before him at a time and place to be specified in the summons for examination upon

oath as a witness or as a haver, and to produce any books, papers, deeds, or documents called for which may be in his possession or power, and the sheriff may take such examination either orally or upon written interrogatories, and shall report the same in writing in the usual form to the court, and shall transmit with such report the books, papers, deeds, or documents produced, if the originals thereof are required and specified by the order, or otherwise such copies thereof or extracts therefrom, authenticated by the sheriff, as may be necessary; and in case any person so summoned fails to appear at the time and place specified, or appearing refuses to be examined or to make the production required, the sheriff shall proceed against such person as a witness or haver duly cited, and failing to appear or refusing to give evidence or make production may be proceeded against by the law of Scotland; and the sheriff shall be entitled to such and the like fees, and the witness shall be entitled to such and the like allowances, as sheriffs when acting as commissioners under appointment from the Court of Session and as witnesses and havers are entitled to in the like cases according to the law and practice of Scotland: If any objection is stated to the sheriff by the witness, either on the ground of his incompetency as a witness, or as to the production required to be made, or on any other ground whatever, the sheriff may, if he thinks fit, report such objection to the court, and suspend the examination of such witness until such objection has been disposed of by the court.

CXXVIII. *Affidavits, &c. may be sworn in Ireland, Scotland, or the Colonies before any competent court or person.*—Any affidavit, affirmation, or declaration required to be sworn or made, under the provisions or for the purposes of this part of this Act, may be lawfully sworn or made in Great Britain or Ireland, or in any colony, island, plantation, or place under the dominion of Her Majesty in foreign parts, before any court, judge, or person lawfully authorised to take and receive affidavits, affirmations, or declarations, or before any of Her Majesty's consuls or vice-consuls, in any foreign parts out of Her Majesty's dominions, and all courts, judges, justices, commissioners, and persons acting judicially shall take judicial notice of the seal or stamp or signature (as the case may be) of any such court, judge, person, consul, or vice-consul attached, appended, or subscribed to any such affidavit, affirmation, or declaration, or to any other document to be used for the purposes of this part of this Act.

Voluntary winding up of Company.

CXXIX. *Circumstances under which company may be wound up voluntarily.*—A company under this Act may be wound up voluntarily—

- (1.) Whenever the period, if any, fixed for the duration of the company by the articles of association expires, or whenever the event, if any, occurs, upon the occurrence of which it is provided by the articles of association that the company is to be dissolved, and the company in general meeting has passed a resolution requiring the company to be wound up voluntarily:

- (2.) Whenever the company has passed a special resolution requiring the company to be wound up voluntarily :
- (3.) Whenever the company has passed an extraordinary resolution to the effect that it has been proved to their satisfaction that the company cannot by reason of its liabilities continue its business, and that it is advisable to wind up the same :

For the purposes of this Act any resolution shall be deemed to be extraordinary which is passed in such manner as would, if it had been confirmed by a subsequent meeting, have constituted a special resolution as herein-before defined.

CCCC. Commencement of voluntary winding up.—A voluntary winding up shall be deemed to commence at the time of the passing of the resolution authorising such winding up.

CCCCI. Effect of voluntary winding up on status of company.—Whenever a company is wound up voluntarily the company shall, from the date of the commencement of such winding up, cease to carry on its business, except in so far as may be required for the beneficial winding up thereof, and all transfers or shares except transfers made to or with the sanction of the liquidators, or alteration in the status of the members of the company taking place after the commencement of such winding up shall be void, but its corporate state and all its corporate powers shall, notwithstanding it is otherwise provided by its regulations, continue until the affairs of the company are wound up.

CCCCII. Notice of resolution to wind up voluntarily.—Notice of any special resolution or extraordinary resolution passed for winding up a company voluntarily shall be given by advertisement as respects companies registered in England in the *London Gazette*, as respects companies registered in Scotland in the *Edinburgh Gazette*, and as respects companies registered in Ireland in the *Dublin Gazette*.

CCCCIII. Consequences of voluntarily winding up.—The following consequences shall ensue upon the voluntary winding up of a company :

- (1.) The property of the company shall be applied in satisfaction of its liabilities *pari passu*, and, subject thereto, shall, unless it be otherwise provided by the regulations of the company, be distributed amongst the members according to their rights and interests in the company :
- (2.) Liquidators shall be appointed for the purpose of winding up the affairs of the company and distributing the property :
- (3.) The company in general meeting shall appoint such persons or persons as it thinks fit to be liquidators or a liquidator, and may fix the remuneration to be paid to them or him :
- (4.) If one person only is appointed, all the provisions herein contained in reference to several liquidators shall apply to him :
- (5.) Upon the appointment of liquidators, all

the power of the directors shall cease, except in so far as the company in general meeting or the liquidators may sanction the continuance of such powers :

- (6.) When several liquidators are appointed, every power hereby given may be exercised by such one or more of them as may be determined at the time of their appointment, or in default of such determination by any number not less than two :
- (7.) The liquidators may, without the sanction of the court, exercise all powers by this Act given to the official liquidator :
- (8.) The liquidators may exercise the powers herein-before given to the court of settling the list of contributories of the company, and any list so settled shall be *prima facie* evidence of the liability of the persons named therein to be contributories :
- (9.) The liquidators may at any time after the passing of the resolution for winding up the company, and before they have ascertained the sufficiency of the assets of the company, call on all or any of the contributories for the time being settled on the list of contributories to the extent of their liability to pay all or any sums they deem necessary to satisfy the debts and liabilities of the company, and the costs, charges, and expenses of winding it up, and for the adjustment of the rights of the contributories amongst themselves, and the liquidators may in making a call take into consideration the probability that some of the contributories upon whom the same is made may partly or wholly fail to pay their respective portions of the same :
- (10.) The liquidators shall pay the debts of the company, and adjust the rights of the contributories amongst themselves.

CCCCIV. Effect of winding up on share capital of company limited by guarantee.—Where a company limited by guarantee, and having a capital divided into shares, is being wound up voluntarily, any share capital that may not have been called up shall be deemed to be assets of the company, and to be a specialty debt due from each member to the company to the extent of any sums that may be unpaid on any shares held by him, and payable at such time as may be appointed by the liquidators.

CCCCV. Power of company to delegate authority to appoint liquidators.—A company about to be wound up voluntarily, or in the course of being wound up voluntarily, may, by an extraordinary resolution, delegate to its creditors, or to any committee of its creditors, the power of appointing liquidators or any of them, and supplying any vacancies in the appointment of liquidators, or may by a like resolution enter into any arrangement with respect to the powers to be exercised by the liquidators, and the manner in which they are to be exercised ; and any act done by the creditors in pursuance of such delegated power

shall have the same effect as if it had been done by the company.

CXXXVI. Arrangement when binding on creditors.—Any arrangement entered into between a company about to be wound up voluntarily, or in the course of being wound up voluntarily, and its creditors, shall be binding on the company if sanctioned by an extraordinary resolution, and on the creditors if acceded to by three-fourths in number and value of the creditors, subject to such right of appeal as is herein-after mentioned.

CXXXVII. Power of creditor or contributory to appeal.—Any creditor or contributory of a company that has in manner aforesaid entered into any arrangement with its creditors may, within three weeks from the date of the completion of such arrangement, appeal to the court against such arrangement, and the court may thereupon, as it thinks just, amend, vary, or confirm the same.

*** CXXXVIII. Power for liquidators or contributories in voluntary winding up to apply to court.**—Where a company is being wound up voluntarily the liquidators or any contributor of the company may apply to the court in England, Ireland, or Scotland, or to the Lord Ordinary on the Bills in Scotland in time of vacation, to determine any question arising in the matter of such winding up, or to exercise, as respects the enforcing of calls, or in respect of any other matter, all or any of the powers which the court might exercise if the company were being wound up by the court; and the court or Lord Ordinary in the case aforesaid, if satisfied that the determination of such question, or the required exercise of power, will be just and beneficial, may accede, wholly or partially, to such application, on such terms and subject to such conditions as the court thinks fit, or it may make such other order, interlocutor, or decree on such application as the court thinks just.

CXXXIX. Power of liquidators to call general meeting.—Where a company is being wound up voluntarily the liquidators may, from time to time, during the continuance of such winding up, summon general meetings of the company for the purpose of obtaining the sanction of the company by special resolution or extraordinary resolution, or for any other purposes they think fit; and in the event of the winding up continuing for more than one year, the liquidators shall summon a general meeting of the company at the end of the first year, and of each succeeding year from the commencement of the winding up, or as soon thereafter as may be convenient, and shall lay before such meeting an account showing their acts and dealings, and the manner in which the winding up has been conducted during the preceding year.

CXL. Power to fill up vacancy in liquidators.—If any vacancy occurs in the office of liquidators appointed by the company, by death, resignation, or otherwise, the company in general meeting may, subject to any arrangement they may have entered into with their creditors, fill up such vacancy, and a general meeting for the purpose of filling up such vacancy may be con-

vened by the continuing liquidators, if any, or by any contributory of the company, and shall be deemed to have been duly held if held in manner prescribed by the regulations of the company, or in such other manner as may, on application by the continuing liquidator, if any, or by any contributory of the company, be determined by the court.

CXLI. Power of court to appoint liquidators.—If from any cause whatever there is no liquidator acting in the case of a voluntary winding up, the court may, on the application of a contributory, appoint a liquidator or liquidators: The court may also, on due cause shown, remove any liquidator, and appoint another liquidator to act in the matter of a voluntary winding up.

CXLII. Liquidators on conclusion of winding up to make up an account.—As soon as the affairs of the company are fully wound up, the liquidators shall make up an account showing the manner in which such winding up has been conducted, and the property of the company disposed of; and thereupon they shall call a general meeting of the company for the purpose of having the account laid before them and hearing any explanation that may be given by the liquidators: The meeting shall be called by advertisement, specifying the time, place, and object of such meeting; and such advertisement shall be published one month at least previously to the meeting as respects companies registered in England in the *London Gazette*, and as respects companies registered in Scotland in the *Edinburgh Gazette*, and as respects companies registered in Ireland in the *Dublin Gazette*.

CXLIII. Liquidators to report meeting to registrar.—The liquidators shall make a return to the registrar of such meeting having been held, and of the date at which the same was held, and on the expiration of three months from the date of the registration of such return the company shall be deemed to be dissolved: If the liquidators make default in making such return to the registrar they shall incur a penalty not exceeding five pounds for every day during which such default continues.

CXLIV. Cost of voluntary liquidation.—All costs, charges, and expenses properly incurred in the voluntary winding up of a company, including the remuneration of the liquidators, shall be payable out of the assets of the company in priority to all other claims.

CXLV. Saving of rights of creditors.—The voluntary winding up of a company shall not be a bar to the right of any creditor of such company to have the same wound up by the court, if the court is of opinion that the rights of such creditor will be prejudiced by a voluntary winding up.

CXLVI. Power of court to adopt proceedings of voluntary winding up.—Where a company is in course of being wound up voluntarily, and proceedings are taken for the purpose of having the same wound up by the court, the court may, if it thinks fit, notwithstanding that it makes an order directing the company to be wound up by the court, provide in such order or in any other

order for the adoption of all or any of the proceedings taken in the course of the voluntary winding up.

Winding up subject to the supervision of the Court.

CXLVII. Power of court, on application, to direct winding up subject to supervision.—When a resolution has been passed by a company to wind up voluntarily, the court may make an order directing that the voluntary winding up should continue, but subject to such supervision of the court, and with such liberty for creditors, contributories, or others, to apply to the court, and generally upon such terms and subject to such conditions as the court thinks just.

CXLVIII. Petition for winding up subject to supervision.—A petition, praying wholly or in part that a voluntary winding up should continue, but subject to the supervision of the court, and which winding up is herein-after referred to as a winding up subject to the supervision of the court, shall, for the purpose of giving jurisdiction to the court over suits and actions, be deemed to be a petition for winding up the company by the court.

CXLIX. Court may have regard to wishes of creditors.—A court may, in determining whether a company is to be wound up altogether by the court or subject to the supervision of the court, in the appointment of liquidator or liquidators, and in all other matters relating to the winding up subject to supervision, have regard to the wishes of the creditors or contributories as proved to it by any sufficient evidence, and may direct meetings of the creditors or contributories to be summoned, held, and regulated in such manner as the court directs for the purpose of ascertaining their wishes, and may appoint a person to act as chairman of any such meeting, and to report the result of such meeting to the court: In the case of creditors regard shall be had to the value of the debts due to each creditor, and in the case of contributories to the number of votes conferred on each contributory by the regulations of the company.

CL. Power to court to appoint additional liquidators in winding up subject to supervision.—Where any order is made by the court for a winding up subject to the supervision of the court, the court may, in such order or in any subsequent order, appoint any additional liquidator or liquidators; and any liquidators so appointed by the court shall have the same powers, be subject to the same obligations, and in all respects stand in the same position as if they had been appointed by the company: The court may from time to time remove any liquidators so appointed by the court, and fill up any vacancy occasioned by such removal, or by death or resignation.

CLI. Effect of order of court for winding up subject to supervision.—Where an order is made for a winding up subject to the supervision of the court, the liquidators appointed to conduct such winding up may, subject to any restrictions imposed by the court, exercise all their powers

without the sanction or intervention of the court, in the same manner as if the company were being wound up altogether voluntarily; but, save as aforesaid, any order made by the court for a winding up, subject to the supervision of the court, shall for all purposes, including the staying of actions, suits, and other proceedings, be deemed to be an order of the court for winding up the company by the court, and shall confer full authority on the court to make calls, or to enforce calls made by the liquidators, and to exercise all other powers which it might have exercised if an order had been made for winding up the company altogether by the court, and in the construction of the provisions whereby the court is empowered to direct any act or thing to be done to or in favour of the official liquidators, the expression official liquidators shall be deemed to mean the liquidators conducting the winding up, subject to the supervision of the court.

CLII. Appointment in certain cases of voluntary liquidators to office of official liquidators.—Where an order has been made for the winding up of a company subject to the supervision of the court, and such order is afterwards superseded by an order directing the company to be wound up compulsorily, the court may in such last-mentioned order, or in any subsequent order, appoint the voluntary liquidators, or any of them, either provisionally or permanently, and either with or without the addition of any other persons, to be official liquidators.

Supplemental Provisions.

CLIII. Dispositions after the commencement of the winding up avoided.—Where any company is being wound up by the court or subject to the supervision of the court, all dispositions of the property, effects, and things in action of the company, and every transfer of shares, or alteration in the status of the members of the company made between the commencement of the winding up and the order for winding up, shall, unless the court otherwise orders, be void.

CLIV. The books of the company to be evidence.—Where any company is being wound up, all books, accounts, and documents of the company and of the liquidators shall as between the contributories of the company, be *prima facie* evidence of the truth of all matters purporting to be therein recorded.

CLV. As to disposal of books, accounts, and documents of the company.—Where any company has been wound up under this Act and is about to be dissolved, the books, accounts, and documents of the company and of the liquidators may be disposed of in the following way; that is to say, where the company has been wound up by or subject to the supervision of the court, in such way as the court directs, and where the company has been wound up voluntarily, in such way as the company by an extraordinary resolution directs; but after the lapse of five years from the date of such dissolution, no responsibility shall rest on the company, or the liquidators, or any one to whom the custody of such books, accounts, and documents has been committed,

by reason that the same, or any of them, cannot be made forthcoming to any party or parties claiming to be interested therein.

CLVI. Inspection of books.—Where an order has been made for winding up a company by the court, or subject to the supervision of the court, the court may make such order for the inspection by the creditors and contributories of the company of its books and papers as the court thinks just, and any books and papers in the possession of the company may be inspected by creditors or contributories, in conformity with the order of the court, but not further or otherwise.

CLVII. Powers of assignee to sue.—Any person to whom anything in action belonging to the company is assigned, in pursuance of this Act, may bring or defend any action or suit relating to such thing in action in his own name.

CLVIII. Debts of all descriptions to be proved.—In the event of any company being wound up under this Act, all debts payable on a contingency, and all claims against the company, present or future, certain or contingent, ascertained or sounding only in damages, shall be admissible to proof against the company, a just estimate being made, so far as is possible, of the value of all such debts or claims as may be subject to any contingency or sound only in damages, or for some other reason do not bear a certain value.

CLIX. General scheme of liquidation may be sanctioned.—The liquidators may, with the sanction of the court, where the company is being wound up by the court or subject to the supervision of the court, and with the sanction of an extraordinary resolution of the company where the company is being wound up altogether voluntarily, pay any classes of creditors in full, or make such compromise or other arrangement as the liquidators may deem expedient with creditors or persons claiming to be creditors, or persons having or alleging themselves to have any claim, present or future, certain or contingent, ascertained or sounding only in damages against the company, or whereby the company may be rendered liable.

CLX. Power to compromise.—The liquidators may, with the sanction of the court, where the company is being wound up by the court or subject to the supervision of the court, and with the sanction of an extraordinary resolution of the company where the company is being wound up altogether voluntarily, compromise all calls and liabilities to calls, debts and liabilities capable of resulting in debts, and all claims, whether present or future, certain or contingent, ascertained or sounding only in damages, subsisting or supposed to subsist between the company and any contributory or alleged contributory, or other debtor or person apprehending liability to the company, and all questions in any way relating to or affecting the assets of the company or the winding up of the company, upon the receipt of such sums, payable at such times, and generally upon such terms as may be agreed upon, with power for the liquidators to take any

security for the discharge of such debts or liabilities, and to give complete discharges in respect of all or any such calls, debts, or liabilities.

CLXI. Power for liquidators to accept shares, &c. as a consideration for sale of property of company.—Where any company is proposed to be or is in the course of being wound up altogether voluntarily, and the whole or a portion of its business or property is proposed to be transferred or sold to another company, the liquidators of the first-mentioned company may, with the sanction of a special resolution of the company by whom they were appointed, conferring either a general authority on the liquidators, or an authority in respect of any particular arrangement, receive in compensation or part compensation for such transfer or sale shares, policies, or other like interests in such other company, for the purpose of distribution amongst the members of the company being wound up, or may enter into any other arrangement whereby the members of the company being wound up may, in lieu of receiving cash, shares, policies, or other like interests, or, in addition thereto, participate in the profits or receive any other benefit from the purchasing company; and any sale made or arrangement entered into by the liquidators in pursuance of this section shall be binding on the members of the company being wound up; subject to this proviso, that if any member of the company being wound up who has not voted in favour of the special resolution passed by the company of which he is a member at either of the meetings held for passing the same expresses his dissent from any such special resolution in writing addressed to the liquidators or one of them, and left at the registered office of the company not later than seven days after the date of the meeting at which such special resolution was passed, such dissenting member may require the liquidators to do one of the following things, as the liquidators may prefer; that is to say, either to abstain from carrying such resolution into effect, or to purchase the interest held by such dissenting member at a price to be determined in manner herein-after mentioned, such purchase money to be paid before the company is dissolved, and to be raised by the liquidators in such manner as may be determined by special resolution; No special resolution shall be deemed invalid for the purposes of this section by reason that it is passed antecedently to or concurrently with any resolution for winding up the company, or for appointing liquidators; but if an order be made within a year for winding up the company by or subject to the supervision of the court, such resolution shall not be of any validity unless it is sanctioned by the court.

CLXII. Mode of determining price.—The price to be paid for the purchase of the interest of any dissenting member may be determined by agreement, but if the parties dispute about the same, such dispute shall be settled by arbitration, and for the purposes of such arbitration the provisions of "The Companies Clauses Consolidation Act, 1845," with respect to the settlement of disputes by arbitration, shall be incorporated with this Act; and in the construction of such

provisions this Act shall be deemed to be the special Act, and "the company" shall mean the company that is being wound up, and any appointment by the said incorporated provisions directed to be made under the hand of the secretary, or any two of the directors, may be made under the hand of the liquidator, if only one, or any two or more of the liquidators if more than one.

CLXIII. Certain attachments, sequestrations, and executions to be void.—Where any company is being wound up by the court or subject to the supervision of the court, any attachment, sequestration, distress, or execution put in force against the estate or effects of the company after the commencement of the winding up shall be void to all intents.

CLXIV. Fraudulent preference.—Any such conveyance, mortgage, delivery of goods, payment, execution, or other Act relating to property as would, if made or done by or against any individual trader, be deemed in the event of his bankruptcy to have been made or done by way of undue or fraudulent preference of the creditors of such trader, shall, if made or done by or against any company, be deemed, in the event of such company being wound up under this Act, to have been made or done by way of undue or fraudulent preference of the creditors of such company, and shall be invalid accordingly; and for the purposes of this section the presentation of a petition for winding up a company shall in the case of a company being wound up by the court or subject to the supervision of the court, and a resolution for winding up the company shall in the case of a voluntary winding up, be deemed to correspond with the Act of bankruptcy in the case of an individual trader; and any conveyance or assignment made by any company formed under this Act of all its estate and effects to trustees for the benefit of all its creditors shall be void to all intents.

CLXV. Power of court to assess damages against delinquent directors and officers.—Where, in the course of the winding up of any company under this Act, it appears that any past or present director, manager, official, or other liquidator, or any officer of such company, has misapplied or retained in his own hands or become liable or accountable for any moneys of the company, or been guilty of any misfeasance or breach of trust in relation to the company, the court may, on the application of any liquidator, or of any creditor or contributory of the company, notwithstanding that the offence is one for which the offender is criminally responsible, examine into the conduct of such director, manager, or other officer, and compel him to repay any moneys so misapplied or retained, or for which he has become liable or accountable, together with interest after such rate as the court thinks just, or to contribute such sums of money to the assets of the company by way of compensation in respect of such misapplication, retention, misfeasance, or breach of trust, as the court thinks just.*

CLXVI. Penalty on falsification of books.—If any director, officer, or contributory of any com-

pany wound up under this Act destroys, mutilates, alters, or falsifies any books, papers, writings, or securities, or makes or is privy to the making of any false or fraudulent entry in any register, book of account, or other document belonging to the company, with intent to defraud or deceive any person, every person so offending shall be deemed to be guilty of a misdemeanour, and upon being convicted shall be liable to imprisonment for any term not exceeding two years, with or without hard labour.

CLXVII. Prosecution of delinquent directors in the case of winding up by court.—Where any order is made for winding up a company by the court or subject to the supervision of the court, if it appear in the course of such winding up that any past or present director, manager, officer, or member of such company has been guilty of any offence in relation to the company for which he is criminally responsible, the court may, on the application of any person interested in such winding up, or of its own motion, direct the official liquidators, or the liquidators (as the case may be), to institute and conduct a prosecution or prosecutions for such offence, and may order the costs and expenses to be paid out of the assets of the company.

CLXVIII. Prosecution of delinquent directors, &c., in case of voluntary winding up.—Where a company is being wound up altogether voluntarily, if it appear to the liquidators conducting such winding up that any past or present director, manager, officer, or member of such company has been guilty of any offence in relation to the company for which he is criminally responsible, it shall be lawful for the liquidators, with the previous sanction of the court, to prosecute such offender, and all expenses properly incurred by them in such prosecution shall be payable out of the assets of the company in priority to all other liabilities.

CLXIX. Penalty of perjury.—If any person, upon any examination upon oath or affirmation authorised under this Act, or in any affidavit, deposition, or solemn affirmation in or about the winding up of any company under this Act, or otherwise in or about any matter arising under this Act, wilfully and corruptly gives false evidence, he shall, upon conviction, be liable to the penalties of wilful perjury.

Power of Courts to make Rules.

CLXX. Power of Lord Chancellor of Great Britain to make rules.—In England the Lord Chancellor of Great Britain, with the advice and consent of the Master of the Rolls, and any one of the Vice-Chancellors for the time being, or with the advice and consent of any two of the Vice-Chancellors, may, as often as circumstances require, make such rules concerning the mode of proceeding to be had for winding up a company in the Court of Chancery as may from time to time seem necessary, but until such rules are made the general practice of the Court of Chancery, including the practice hitherto in use in winding up companies, shall, so far as the same is applicable and not inconsistent with this Act, apply to all proceedings for winding up a company.

Repealed 1881.

CLXXI. Power of Court of Session in Scotland to make rules.—In Scotland the Court of Session may make such rules concerning the mode of winding up as may be necessary by Act of Sederunt; but, until such rules are made, the general practice of the Court of Session in suits pending in such courts shall, so far as the same is applicable, and not inconsistent with this Act, apply to all proceedings for winding up a company, and official liquidators shall in all respects be considered as possessing the same powers as any trustee on a bankrupt estate.

CLXXII. Power to make rules in Stannaries Court.—The Vice-Warden of the Stannaries may from time to time, with the consent provided for by section twenty-three of the Act of eighteenth of Victoria, chapter thirty-two, make rules for carrying into effect the powers conferred by this Act upon the Court of the Vice-Warden, but, subject to such rules, the general practice of the said court and of the registrar's office in the said court, including the present practice of the said court in winding up companies, may be applied to all proceedings under this Act; the said Vice-Warden may likewise, with the same consent, make from time to time rules for specifying the fees to be taken in his said court in proceedings under this Act; and any rules so made shall be of the same force as if they had been enacted in the body of this Act; and the fees paid in respect of proceeding taken under this Act, including fees taken under "The Joint Stock Companies Act, 1856," in the matter of winding up companies, shall be applied exclusively towards payment of such additional officers, or such increase of the salaries of existing officers, or pensions to retired officers, or such other needful expenses of the court, as the Lord Warden of the Stannaries shall from time to time, on the application of the Vice-Warden or otherwise, think fit to direct, sanction, or assign, and meanwhile shall be kept as a separate fund apart from the ordinary fees of the court arising from other business, to await such direction and order of the Lord Warden herein, and to accumulate by investment in Government securities until the whole shall have been so appropriated.

CLXXIII. Power of Lord Chancellor of Ireland to make rules.—In Ireland the Lord Chancellor of Ireland may, as respects the winding up of companies in Ireland, with the advice and consent of the Master of the Rolls in Ireland, exercise the same power of making rules as is by this Act herein-before given to the Lord Chancellor of Great Britain; but until such rules are made the general practice of the Court of Chancery in Ireland, including the practice hitherto in use in Ireland in winding up companies, shall, so far as the same is applicable and not inconsistent with this Act, apply to all proceedings for winding up a company.

PART V.

REGISTRATION OFFICE.

CLXXIV. Constitution of registration office.—The registration of companies under this Act shall be conducted as follows; (that is to say),

- (1.) The Board of Trade may from time to time appoint such registrars, assistant

registrars, clerks, and servants as they may think necessary for the registration of companies under this Act, and remove them at pleasure:

- (2.) The Board of Trade may make such regulations as they think fit with respect to the duties to be performed by any such registrars, assistant registrars, clerks, and servants as aforesaid:
- (3.) The Board of Trade may from time to time determine the places at which offices for the registration of companies are to be established, so that there be at all times maintained in each of the three parts of the United Kingdom at least one such office, and that no company shall be registered except at an office within that part of the United Kingdom in which by the memorandum of association the registered office of the company is declared to be established; and the Board may require that the registrar's office of the Court of the Vice-Warden of the Stannaries shall be one of the offices for the registration of companies formed for working mines within the jurisdiction of the court:
- (4.) The Board of Trade may from time to time direct a seal or seals to be prepared for the authentication of any documents required for or connected with the registration of companies:
- (5.) Every person may inspect the documents kept by the registrar of joint stock companies; and there shall be paid for such inspection such fees as may be appointed by the Board of Trade, not exceeding one shilling for each inspection; and any person may require a certificate of the incorporation of any company, or a copy or extract of any other document or any part of any other document, to be certified by the registrar; and there shall be paid for such certificate of incorporation, certified copy, or extract such fees as the Board of Trade may appoint, not exceeding five shillings for the certificate of incorporation, and not exceeding sixpence for each folio of such copy or extract, or in Scotland for each sheet of two hundred words:
- (6.) The existing registrar, assistant registrars, clerks, and other officers and servants in the office for the registration of joint stock companies shall, during the pleasure of the Board of Trade, hold the offices and receive the salaries hitherto held and received by them, but they shall in the execution of their duties conform to any regulations that may be issued by the Board of Trade:
- (7.) There shall be paid to any registrar, assistant registrar, clerk, or servant that may hereafter be employed in the registration of joint stock companies such salary as the Board of Trade may, with the sanction of the Commissioners of the Treasury direct:
- (8.) Whenever any act is herein directed to be done to or by the registrar of joint stock

companies, such act shall, until the Board of Trade otherwise directs, be done in England to or by the existing registrar of joint stock companies, or in his absence to or by such person as the Board of Trade may for the time being authorise; in Scotland to or by the existing registrar of joint stock companies in Scotland; and in Ireland to or by the existing assistant registrar of joint stock companies for Ireland, or by such person as the Board of Trade may for the time being authorise in Scotland or Ireland in the absence of the registrar; but in the event of the Board of Trade altering the constitution of the existing registry office, such act shall be done to or by such officer or officers and at such place or places with reference to the local situation of the registered offices of the companies to be registered as the Board of Trade may appoint.

PART VI.

APPLICATION OF ACT TO COMPANIES REGISTERED UNDER THE JOINT STOCK COMPANIES ACTS.

CLXXV. Definition of Joint Stock Companies Acts.—The expression "Joint Stock Companies Acts," as used in this Act, shall mean "The Joint Stock Companies Act, 1856," "The Joint Stock Companies Act, 1856, 1857," "The Joint Stock Banking Companies Act, 1857," and "The Act to enable Joint Stock Banking Companies to be formed on the principle of Limited Liability," or any one or more of such Acts as the case may require; but shall not include the Act passed in the eighth year of the reign of Her present Majesty, chapter one hundred and ten, and intitled "An Act for the Registration, Incorporation, and Regulation of Joint Stock Companies."

CLXXVI. Application of Act to companies formed under Joint Stock Companies Acts.—Subject as herein-after mentioned, this Act, with the exception of table A in the first schedule, shall apply to companies formed and registered under the said Joint Stock Companies Acts, or any of them, in the same manner in the case of a limited company as if such company had been formed and registered under this Act as a company limited by shares, and in the case of a company other than a limited company as if such company had been formed and registered as an unlimited company under this Act, with this qualification, that wherever reference is made expressly or impliedly to the date of registration, such date shall be deemed to refer to the date at which such companies were respectively registered under the said Joint Stock Companies Acts or any of them, and the power of altering regulations by special resolution given by this Act shall, in the case of any company formed and registered under the said Joint Stock Companies Acts or any of them, extend to altering any provisions contained in the table marked B annexed to "The Joint Stock Companies Act, 1856," and shall also in the case of an unlimited company formed and registered as last aforesaid extend to altering any regulations relating to the amount of capital or its distribution into shares, notwithstanding such regulations are contained in the memorandum of association.

CLXXVII. Application of Act to companies registered under Joint Stock Companies Acts.—This Act shall apply to companies registered but not formed under the said Joint Stock Companies Acts or any of them in the same manner as it is herein-after declared to apply to companies registered but not formed under this Act, with this qualification, that wherever reference is made expressly or impliedly to the date of registration, such date shall be deemed to refer to the date at which such companies were respectively registered under the said Joint Stock Companies Acts or any of them.

CLXXVIII. Mode of transferring shares.—Any company registered under the said Joint Stock Companies Acts or any of them may cause its shares to be transferred in manner hitherto in use, or in such other manner as the company may direct.

PART VII.

COMPANIES AUTHORISED TO REGISTER UNDER THIS ACT.

CLXXIX. Regulations as to registration of existing companies.—The following regulations shall be observed with respect to the registration of companies under this part of this Act, (that is to say,)

- (1.) No company having the liability of its members limited by Act of Parliament or letters patent, and not being a joint stock company as herein-after defined, shall register under this Act in pursuance of this part thereof:
- (2.) No company having the liability of its members limited by Act of Parliament or by letters patent shall register under this Act in pursuance of this part thereof as an unlimited company, or as a company limited by guarantee:
- (3.) No company that is not a joint stock company as herein-after defined, shall in pursuance of this part of this Act register under this Act as a company limited by shares:
- (4.) No company shall register under this Act in pursuance of this part thereof unless an assent to its so registering is given by a majority of such of its members as may be present, personally or by proxy, in cases where proxies are allowed by the regulations of the company, at some general meeting summoned for the purpose:
- (5.) Where a company not having the liability of its members limited by Act of Parliament or letters patent is about to register as a limited company, the majority required to assent as aforesaid shall consist of not less than three-fourths of the members present, personally or by proxy, at such last-mentioned general meeting:
- (6.) Where a company is about to register as a company limited by guarantee, the assent to its being so registered shall be accompanied by a resolution declaring that each member undertakes to contribute to the assets of the company, in the event of the

same being wound up, during the time that he is a member, or within one year afterwards, for payment of the debts and liabilities of the company contracted before the time at which he ceased to be a member, and of the costs, charges, and expenses of winding up the company, and for the adjustment of the rights of the contributories amongst themselves, such amount as may be required, not exceeding a specified amount:

In computing any majority under this section when a poll is demanded regard shall be had to the number of votes to which each member is entitled according to the regulations of the company of which he is a member.

CLXXX. Companies capable of being registered.—With the above exceptions, and subject to the foregoing regulations, every company existing at the time of the commencement of this Act, including any company registered under the said Joint Stock Companies Acts, consisting of seven or more members, and any company hereafter formed in pursuance of any Act of Parliament other than this Act, or of letters patent, or being a company engaged in working mines within and subject to the jurisdiction of the stannaries, or being otherwise duly constituted by law, and consisting of seven or more members, may at any time hereafter register itself under this Act as an unlimited company, or a company limited by shares, or a company limited by guarantee; and no such registration shall be invalid by reason that it has taken place with a view to the company being wound up.

CLXXXI. Definition of joint stock company.—For the purposes of this part of this Act, so far as the same relates to the description of companies empowered to register as companies limited by shares, a joint stock company shall be deemed to be a company having a permanent paid-up or nominal capital of fixed amount, divided into shares, also of fixed amount, or held and transferable as stock, or divided and held partly in one way and partly in the other, and formed on the principle of having for its members the holders of shares in such capital, or the holders of such stock, and no other persons; and such company when registered with limited liability under this Act shall be deemed to be a company limited by shares.

CLXXXII. Provision as to banking company.—No banking company claiming to issue notes in the United Kingdom shall be entitled to limited liability in respect of such issue, but shall continue subject to unlimited liability in respect thereof, and, if necessary, the assets shall be marshalled for the benefit of the general creditors, and the members shall be liable for the whole amount of the issue, in addition to the sum for which they would be liable as members of a limited company.

CLXXXIII. Requisitions for registration by companies.—Previously to the registration in pursuance of this part of this Act of any joint stock company there shall be delivered to the registrar the following documents; (that is to say,)

- (1.) A list showing the names, addresses, and occupations of all persons who on a day named in such list, and not being more than six clear days before the day of registration, were members of such company, with the addition of the shares held by such persons respectively, distinguishing, in cases where such shares are numbered, each share by its number:
- (2.) A copy of any Act of Parliament, royal charter, letters patent, deed of settlement, contract of copartnership, cost book regulations, or other instrument constituting or regulating the company:
- (3.) If any such joint stock company is intended to be registered as a limited company, the above list and copy shall be accompanied by a statement specifying the following particulars; that is to say,

The nominal capital of the company and the number of shares into which it is divided:

The number of shares taken and the amount paid on each share:

The name of the company, with the addition of the word "limited" as the last word thereof:

With the addition, in the case of a company intended to be registered as a company limited by guarantee, of the resolution declaring the amount of the guarantee.

CLXXXIV. Requisitions for registration by existing company not being a joint stock company.

—Previously to the registration in pursuance of this part of this Act of any company not being a joint stock company there shall be delivered to the registrar a list showing the names, addresses, and occupations of the directors or other managers (if any) of the company, also a copy of any Act of Parliament, letters patent, deed of settlement, contract of copartnership, cost book regulations, or other instrument, constituting or regulating the company, with the addition, in the case of a company intended to be registered as a company limited by guarantee, of the resolution declaring the amount of guarantee.

CLXXXV. Power for existing company to register amount of stock instead of shares.

—Where a joint stock company authorised to register under this Act has had the whole or any portion of its capital converted into stock, such company shall, as to the capital so converted, instead of delivering to the registrar a statement of shares, deliver to the registrar a statement of the amount of stock belonging to the company, and the names of the persons who were holders of such stock, on some day to be named in the statement, not more than six clear days before the day of registration.

CLXXXVI. Authentication of statements of existing companies.—The lists of members and directors and any other particulars relating to the company hereby required to be delivered to the registrar shall be verified by a declaration of the directors of the company delivering the same, or any two of them, or of any two other

principal officers of the company, made in pursuance of the Act passed in the sixth year of the reign of His late Majesty King William the Fourth, chapter sixty-two.

CLXXXVII. Registrar may require evidence as to nature of company.—The registrar may require such evidence as he thinks necessary for the purpose of satisfying himself whether an existing company is or is not a joint stock company as herein-before defined.

CLXXXVIII. On registration of banking company with limited liability notice to be given to customers.—Every banking company existing at the date of the passing of this Act which registers itself as a limited company shall, at least thirty days previous to obtaining a certificate of registration with limited liability, give notice that it is intended so to register the same to every person and partnership firm who have a banking account with the company, and such notice shall be given either by delivering the same to such person or firm, or leaving the same or putting the same into the post addressed to him or them at such address as shall have been last communicated or otherwise become known as his or their address to or by the company; and in case the company omits to give any such notice as is herein-before required to be given, then as between the company and the person or persons only who are for the time being interested in the account in respect of which such notice ought to have been given, and so far as respects such account and all variations thereof down to the time at which such notice shall be given, but not further or otherwise, the certificate of registration with limited liability shall have no operation.

CLXXXIX. Exemption of certain companies from payment of fees.—No fees shall be charged in respect of the registration in pursuance of this part of this Act of any company in cases where such company is not registered as a limited company, or where previously to its being registered as a limited company the liability of the shareholders was limited by some other Act of Parliament or by letters patent.

CXC. Power to company to change name.—Any company authorised by this part of this Act to register with limited liability shall, for the purpose of obtaining registration with limited liability, change its name, by adding thereto the word "limited."

CXCI. Certificate of registration of existing companies.—Upon compliance with the requisitions in this part of this Act contained with respect to registration, and on payment of such fees, if any, as are payable under the tables marked B and C in the first schedule hereto, the registrar shall certify under his hand that the company so applying for registration is incorporated as a company under this Act, and, in the case of a limited company, that it is limited, and thereupon such company shall be incorporated, and shall have perpetual succession and a common seal, with power to hold lands; and any banking company in Scotland so incorporated, shall be deemed and taken to be a bank

incorporated, constituted, or established by or under Act of Parliament.

CXCII. Certificate to be evidence of compliance with Act.—A certificate of incorporation given at any time to any company registered in pursuance of this part of this Act shall be conclusive evidence that all the requisitions herein contained in respect of registration under this Act have been complied with, and that the company is authorised to be registered under this Act as a limited or unlimited company, as the case may be, and the date of incorporation mentioned in such certificate shall be deemed to be the date at which the company is incorporated under this Act.

CXCIII. Transfer of property to company.—All such property, real and personal, including all interests and rights in, to, and out of property, real and personal, and including obligations and things in action, as may belong to or be vested in the company at the date of its registration under this Act, shall on registration pass to and vest in the company as incorporated under this Act for all the estate and interest of the company therein.

CXCIV. Registration under this Act not to affect obligations incurred previously to registration.—The registration in pursuance of this part of this Act of any company shall not affect or prejudice the liability of such company to have enforced against it, or its right to enforce, any debt or obligation incurred, or any contract entered into by, to, with, or on behalf of such company previously to such registration.

CXCV. Continuation of existing actions and suits.—All such actions, suits, and other legal proceedings as may at the time of the registration of any company registered in pursuance of this part of this Act have been commenced by or against such company, or the public officer or any member thereof, may be continued in the same manner as if such registration had not taken place; nevertheless, execution shall not issue against the effects of any individual member of such company upon any judgment, decree, or order obtained in any action, suit, or proceeding so commenced as aforesaid; but in the event of the property and effects of the company being insufficient to satisfy such judgment, decree, or order, an order may be obtained for winding up the company.

CXCVI. Effect of registration under Act.—When a company is registered under this Act in pursuance of this part thereof, all provisions contained in any Act of Parliament, deed of settlement, contract of copartnership, cost book regulations, letters patent, or other instrument constituting or regulating the company, including, in the case of a company registered as a company limited by guarantee, the resolution declaring the amount of the guarantee, shall be deemed to be conditions and regulations of the company, in the same manner and with the same incidents as if they were contained in a registered memorandum of association and articles of association; and all the provisions of this Act shall apply to such company, and the

Repealed 1901.

members, contributories, and creditors thereof, in the same manner in all respects as if it had been formed under this Act, subject to the provisions following: (that is to say,)

- (1.) That table A in the first schedule to this Act shall not, unless adopted by special resolution, apply to any company registered under this Act in pursuance of this part thereof:
- (2.) That the provisions of this Act relating to the numbering of shares shall not apply to any joint stock company whose shares are not numbered:
- (3.) That no company shall have power to alter any provision contained in any Act of Parliament relating to the company:
- (4.) That no company shall have power, without the sanction of the Board of Trade, to alter any provision contained in any letters patent relating to the company:
- (5.) That in the event of the company being wound up, every person shall be a contributory, in respect of the debts and liabilities of the company contracted prior to registration, who is liable, at law or in equity, to pay or contribute to the payment of any debt or liability of the company contracted prior to registration, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members amongst themselves in respect of any such debt or liability; or to pay or contribute to the payment of the costs, charges, and expenses of winding up the company, so far as relates to such debts or liabilities as aforesaid; and every such contributory shall be liable to contribute to the assets of the company, in the course of the winding up, all sums due from him in respect of any such liability as aforesaid; and in the event of the death, bankruptcy, or insolvency of any such contributory as last aforesaid, or marriage of any such contributory being a female, the provisions herein-before contained with respect to the representatives, heirs, and devisees of deceased contributories, and with reference to the assignees of bankrupt or insolvent contributories, and to the husbands of married contributories, shall apply:
- (6.) That nothing herein contained shall authorise any company to alter any such provisions contained in any deed of settlement, contract of copartnery, cost book regulations, letters patent, or other instrument constituting or regulating the company, as would, if such company had originally been formed under this Act, have been contained in the memorandum of association, and are not authorised to be altered by this Act:

But nothing herein contained shall derogate from any power of altering its constitution or regulations which may be vested in any company registering under this Act in pursuance of this part thereof by virtue of any Act of Parliament, deed of settlement, contract of copartnery,

letters patent, or other instrument constituting or regulating the company.

CXCIV. Power of court to restrain further proceedings.—The court may, at any time after the presentation of a petition for winding up a company registered in pursuance of this part of this Act, and before making an order for winding up the company, upon the application by motion of any creditor of the company, restrain further proceedings in any action, suit, or legal proceeding against any contributory of the company as well as against the company as herein-before provided, upon such terms as the court thinks fit.

CXCV. Order for winding up company.—Where an order has been made for winding up a company registered in pursuance of this part of the Act, in addition to the provisions herein-before contained, it is hereby further provided that no suit, action, or other legal proceeding shall be commenced or proceeded with against any contributory of the company in respect of any debt of the company, except with the leave of the court, and subject to such terms as the court may impose.

PART VIII.

APPLICATION OF ACT TO UNREGISTERED COMPANIES.

CXCIX. Winding up of unregistered companies.—Subject as herein-after mentioned, any partnership, association, or company, except railway companies, incorporated by Act of Parliament, consisting of more than seven members, and not registered under this Act, and herein-after included under the term unregistered company, may be wound up under this Act, and all the provisions of this Act with respect to winding up shall apply to such company, with the following exceptions and additions:

- (1.) An unregistered company shall, for the purpose of determining the court having jurisdiction in the matter of the winding up, be deemed to be registered in that part of the United Kingdom where its principal place of business is situate; or, if it has a principal place of business situate in more than one part of the United Kingdom, then in each part of the United Kingdom where it has a principal place of business; moreover the principal place of business of an unregistered company, or (where it has a principal place of business situate in more than one part of the United Kingdom) such one of its principal places of business as is situate in that part of the United Kingdom in which proceedings are being instituted, shall for all the purposes of the winding up of such company be deemed to be the registered office of the company:
- (2.) No unregistered company shall be wound up under this Act voluntarily or subject to the supervision of the court:
- (3.) The circumstances under which an unregistered company may be wound up are as follows: (that is to say,)—
 - (a.) Whenever the company is dissolved

- or has ceased to carry on business, or is carrying on business only for the purpose of winding up its affairs;
- (b.) Whenever the company is unable to pay its debts;
- (c.) Whenever the court is of opinion that it is just and equitable that the company should be wound up;
- (4.) An unregistered company shall, for the purposes of this Act, be deemed to be unable to pay its debts—

(a.) Whenever a creditor to whom the company is indebted, at law or in equity, by assignment or otherwise, in a sum exceeding fifty pounds then due, has served on the company, by leaving the same at the principal place of business of the company, or by delivering to the secretary or some director or principal officer of the company, or by otherwise serving the same in such manner as the court may approve or direct, a demand under his hand requiring the company to pay the sum so due, and the company has for the space of three weeks succeeding the service of such demand neglected to pay such sum, or to secure or compound for the same to the satisfaction of the creditor :

(b.) Whenever any action, suit, or other proceeding has been instituted against any member of the company for any debt or demand due, or claimed to be due, from the company, or from him in his character of member of the company, and notice in writing of the institution of such action, suit, or other legal proceeding having been served upon the company by leaving the same at the principal place of business of the company, or by delivering it to the secretary, or some director, manager, or principal officer of the company, or by otherwise serving the same in such manner as the court may approve or direct, the company has not within ten days after service of such notice paid, secured, or compounded for such debt or demand, or procured such action, suit, or other legal proceeding to be stayed, or indemnified the defendant to his reasonable satisfaction against such action, suit, or other legal proceeding, and against all costs, damages, and expenses to be incurred by him by reason of the same :

(c.) Whenever, in England or Ireland, execution or other process issued on a judgment, decree, or order obtained in any court in favour of any creditor in any proceeding at law or in equity instituted by such creditor against the company, or any member thereof as such, or against any person authorised to be sued as nominal defendant on behalf of the company, is returned unsatisfied :

(d.) Whenever, in the case of an unregistered company engaged in working mines within and subject to the jurisdiction of the stannaries, a customary decree or order absolute for the sale of the machinery, materials, and effects of such mine has been made in a creditor's suit in the Court of the Vice-Warden :

(e.) Whenever, in Scotland, the inducements of a charge for payment on an extract decree, or an extract registered bond, or an extract registered protest, have expired without payment being made :

(f.) Whenever it is otherwise proved to the satisfaction of the court that the company is unable to pay its debts.

CC. Who to be deemed a contributory in the event of company being wound up.—In the event of an unregistered company being wound up every person shall be deemed to be a contributory who is liable at law or in equity to pay or contribute to the payment of any debt or liability of the company, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members amongst themselves, or to pay or contribute to the payment of the costs, charges, and expenses of winding up the company, and every such contributory shall be liable to contribute to the assets of the company in the course of the winding up all sums due from him in respect of any such liability as aforesaid ; but in the event of the death, bankruptcy, or insolvency of any contributory, or marriage of any female contributory, the provisions herein-before contained with respect to the personal representatives, heirs, and devisees of a deceased contributory, and to the assignees of a bankrupt or insolvent contributory, and to the husband of married contributories, shall apply. *

CCI. Power of court to restrain further proceedings.—The court may, at any time after the presentation of a petition for winding up an unregistered company, and before making an order for winding up the company, upon the application of any creditor of the company, restrain further proceedings in any action, suit, or proceeding against any contributory of the company, or against the company as herein-before provided, upon such terms as the court thinks fit.

CCII. Effect of order for winding up company.—Where an order has been made for winding up an unregistered company in addition to the provisions herein-before contained in the case of companies formed under this Act, it is hereby further provided that no suit, action, or other legal proceeding shall be commenced or proceeded with against any contributory of the company in respect of any debt of the company, except with the leave of the court, and subject to such terms as the court may impose.

CCIII. Provision in case of unregistered company.—If any unregistered company has no power to sue and be sued in a common name, or if for any reason it appears expedient, the court may by the order made for winding up

such company, or by any subsequent order, direct that all such property, real and personal, including all interest, claims, and rights into and out of property, real and personal, and including things in action, as may belong to or be vested in the company, or to or in any person or persons on trust for or on behalf of the company, or any part of such property, is to vest in the official liquidator or official liquidators by his or their official name or names, and thereupon the same or such part thereof as may be specified in the order shall vest accordingly, and the official liquidator or official liquidators may, in his or their official name or names, or in such name or names and after giving such indemnity as the court directs, bring or defend any actions, suits, or other legal proceeding relating to any property vested in him or them, or any actions, suits, or other legal proceedings necessary to be brought or defended for the purposes of effectually winding up the company and recovering the property thereof.

CCIV. Provisions in this part of Act cumulative.—The provisions made by this part of the Act with respect to unregistered companies shall be deemed to be made in addition to and not in restriction of any provisions herein-before contained with respect to winding up companies by the court, and the court or official liquidator may, in addition to anything contained in this part of the Act, exercise any powers or do any act in the case of unregistered companies which might be exercised or done by it or him in winding up companies formed under this Act; but an unregistered company shall not, except in the event of its being wound up, be deemed to be a company under this Act, and then only to the extent provided by this part of this Act.

PART IX.

REPEAL OF ACTS, AND TEMPORARY PROVISIONS.

CCV. Repeal of Acts.—After the commencement of this Act there shall be repealed the several Acts specified in the first part of the third schedule hereto, with this qualification, that so much of the said Acts as is set forth in the second part of the said third schedule shall be hereby re-enacted and continue in force as if unrepealed.*

CCVI. Saving clause as to repeal.—No repeal hereby enacted shall affect—

- (1.) Anything duly done under any Acts hereby repealed:
- (2.) The incorporation of any company registered under any Act hereby repealed:
- (3.) Any right or privilege acquired or liability incurred under any Act hereby repealed:
- (4.) Any penalty, forfeiture, or other punishment incurred in respect of any offence against any Act hereby repealed:
- (5.) Table B in the schedule annexed to the Joint Stock Companies Act, 1856, or any part thereof, so far as the same applies to any company existing at the time of the commencement of this Act.

CCVII. Saving of existing proceedings for winding up.—Where previously to the com-

mencement of this Act an order has been made for winding up a company under any Acts or Act hereby repealed, or a resolution has been passed for winding up a company voluntarily, such company shall be wound up in the same manner and with the same incidents as if this Act were not passed, and for the purposes of such winding up such repealed Acts or Act shall be deemed to remain in full force.

CCVIII. Saving of conveyance deeds.—Where previously to the commencement of this Act any conveyance, mortgage, or other deed has been made in pursuance of any Act hereby repealed, such deed shall be of the same force as if this Act had not passed, and for the purposes of such deed such repealed Act shall be deemed to remain in full force.

CCIX. Compulsory registration of certain companies.—Every insurance company completely registered under the Act passed in the eighth year of the reign of Her present Majesty, chapter one hundred and ten, intitled "An Act for the Registration, Incorporation, and Regulation of Joint Stock Companies," shall, on or before the second day of November one thousand eight hundred and sixty-two, and every other company required by any Act hereby repealed to register under the said Joint Stock Companies Acts, or one of such Acts, and which has not so registered, shall, on or before the expiration of the thirty-first day from the commencement of this Act, register itself as a company under this Act, in manner and subject to the regulations herein-before contained, with this exception, that no company completely registered under the said Act of the eighth year of the reign of Her present Majesty shall be required to deliver to the registrar a copy of its deed of settlement; and for the purpose of enabling such insurance companies as are mentioned in this section to register under this Act, this Act shall be deemed to come into operation immediately on the passing thereof; nevertheless the registration of such companies shall not have any effect until the time of the commencement of this Act. No fees shall be charged in respect of the registration of any company required to register by this section.

CCX. Penalty on company not registering. 21 Vict., c. 14, s. 28.—If any company required by the last section to register under this Act makes default in complying with the provisions thereof, then, from and after the day upon which such company is required to register under this Act, until the day on which such company is registered under this Act (which it is empowered to do at any time), the following consequences shall ensue; (that is to say,)

- (1.) The company shall be incapable of suing either at law or in equity, but shall not be incapable of being made a defendant to a suit either at law or in equity:
- (2.) No dividend shall be payable to any shareholder in such company:
- (3.) Each director or manager of the company shall for each day during which the company so being in default carries on business incur a penalty not exceeding five

* § 205. This section is now—"So much of the said Acts as is set forth in the second part of the said third schedule shall continue in force." the remainder being repealed, S. L. R. Act, 1893

pounds, and such penalty may be recovered by any person, whether a shareholder or not in the company, and be applied by him to his own use:

Nevertheless, such default shall not render the company so being in default illegal, nor subject it to any penalty or disability, other than as specified in this section; and registration under this Act shall cancel any penalty or forfeiture, and put an end to any disability which any company may have incurred under any Act hereby repealed by reason of its not having registered under the said Joint Stock Companies Acts, 1856, 1857, or one of them.

CCXI. Temporary power for companies to change registered office.—Upon the application of the directors of any company registered under the Joint Stock Companies Acts as herein-before defined, or any of them, made within one year after the date of the commencement of this Act, sanctioned by a resolution passed at an extraordinary general meeting, but subject to the restrictions herein-after mentioned, the Board of Trade shall have authority by their certificate in writing to change the registered office of any such company from any one part of the United Kingdom of Great Britain and Ireland to any other part thereof, and the registrar of joint stock companies with whom the memorandum of registration of such company has been registered shall, upon receipt of such certificate, note in writing upon the margin or at the foot of the said memorandum the name of the place to which such registered office is to be transferred, and the day upon which such transfer is pursuant to such certificate to take place, and shall attach the certificate to the memorandum, and the said registrar shall thereupon transmit to

the registrar of joint stock companies for that part of the United Kingdom to which the registered office is to be so transferred copies of the said certificate and of the said memorandum of registration so noted certified by him; and the said registrar for the said last-mentioned part of the United Kingdom shall, upon receipt of such copies of certificate and memorandum, retain and register the same in like manner, and on payment of the like fees to him as provided in the case of the registration of an original memorandum of registration, and thereupon the place of the registered office shall, from the said last-mentioned registration and the said day mentioned in the said certificate, be the place mentioned as such on the said certificate: Provided, however, that such change shall in no wise alter or affect anything theretofore done by the said company, or any of their rights or liabilities in respect thereof.

CCXII. Restrictions on issue of certificate.—The Board of Trade shall not issue their certificate in pursuance of the foregoing section until they are satisfied that an advertisement of the intention of the company to apply to the Board of Trade for a certificate, with a declaration that all parties objecting thereto are forthwith to apply to the Board of Trade, has been published once at the least in each of four successive weeks in the newspapers following; that is to say, in some newspaper circulating in the district where the registered office of the company is situate, and also if the company is registered in England in the *London Gazette*, if in Ireland in the *Dublin Gazette*, if in Scotland in the *Edinburgh Gazette*, nor until the said Board are satisfied that the objections, if any, that may be urged against the issue of such certificate are groundless.

Repealed 1875.

Repealed 1875.

SCHEDULES.

FIRST SCHEDULE.

TABLE A.

REGULATIONS FOR MANAGEMENT OF A COMPANY LIMITED BY SHARES.

Shares.

1. If several persons are registered as joint holders of any share, any one of such persons may give effectual receipts for any dividend payable in respect of such share.
2. Every member shall, on payment of one shilling, or such less sum as the company in general meeting may prescribe, be entitled to a certificate, under the common seal of the company, specifying the share or shares held by him, and the amount paid up thereon.
3. If such certificate is worn out or lost, it may be renewed, on payment of one shilling, or

such less sum as the company in general meeting may prescribe.

Calls on Shares.

4. The directors may from time to time make such calls upon the members in respect of all monies unpaid on their shares as they think fit, provided that twenty-one days' notice at least is given of each call, and each member shall be liable to pay the amount of calls so made to the persons and at the times and places appointed by the directors.
5. A call shall be deemed to have been made at the time when the resolution of the directors authorising such call was passed.
6. If the call payable in respect of any share is not paid before or on the day appointed for payment thereof, the holder for the time being of such share shall be liable to pay interest for

the same at the rate of five pounds per cent per annum from the day appointed for the payment thereof to the time of the actual payment.

7. The directors may, if they think fit, receive from any member willing to advance the same all or any part of the monies due upon the shares held by him beyond the sums actually called for; and upon the monies so paid in advance, or so much thereof as from time to time exceeds the amount of the calls then made upon the shares in respect of which such advance has been made, the company may pay interest at such rate as the member paying such sum in advance and the directors agree upon.

Transfers of Shares.

8. The instrument of transfer of any share in the company shall be executed both by the transferor and transferee, and the transferor shall be deemed to remain a holder of such share until the name of the transferee is entered in the register book in respect thereof.

9. Shares in the company shall be transferred in the following form:—

I, A.B. of in consideration of the sum of . . . pounds paid to me by C.D. of . . . do hereby transfer to the said C.D. the share [or shares] numbered . . . standing in my name in the books of the . . . company, to hold unto the said C.D., his executors, administrators, and assigns, subject to the several conditions on which I held the same at the time of the execution hereof; and I the said C.D. do hereby agree to take the said share [or shares] subject to the same conditions. As witness our hands, the . . . day of

10. The company may decline to register any transfer of shares made by a member who is indebted to them.

11. The transfer books shall be closed during the fourteen days immediately preceding the ordinary general meeting in each year.

Transmission of Shares.

12. The executors or administrators of a deceased member shall be the only persons recognised by the company as having any title to his share.

13. Any person becoming entitled to a share in consequence of the death, bankruptcy, or insolvency of any member, or in consequence of the marriage of any female member, may be registered as a member upon such evidence being produced as may from time to time be required by the company.

14. Any person who has become entitled to a share in consequence of the death, bankruptcy, or insolvency of any member, or in consequence of the marriage of any female member, may, instead of being registered himself, elect to have some person to be named by him registered as a transferee of such share.

15. The person so becoming entitled shall testify such election by executing to his nominee an instrument of transfer of such share.

16. The instrument of transfer shall be presented to the company, accompanied with such evidence as the directors may require to prove

the title of the transferor, and thereupon the company shall register the transferee as a member.

Forfeiture of Shares.

17. If any member fails to pay any call on the day appointed for payment thereof, the directors may, at any time thereafter during such time as the call remains unpaid, serve a notice on him, requiring him to pay such call, together with interest and any expenses that may have accrued by reason of such non-payment.

18. The notice shall name a further day, on or before which such call, and all interest and expenses that have accrued by reason of such non-payment, are to be paid. It shall also name the place where payment is to be made (the place so named being either the registered office of the company or some other place at which calls of the company are usually made payable). The notice shall also state that in the event of non-payment at or before the time and at the place appointed the shares in respect of which such call was made will be liable to be forfeited.

19. If the requisitions of any such notice as aforesaid are not complied with, any share in respect of which such notice has been given may at any time thereafter, before payment of all calls, interest, and expenses due in respect thereof has been made, be forfeited, by a resolution of the directors to that effect.

20. Any share so forfeited shall be deemed to be the property of the company, and may be disposed of in such manner as the company in general meeting thinks fit.

21. Any member whose shares have been forfeited shall notwithstanding be liable to pay to the company all calls owing upon such shares at the time of the forfeiture.

22. A statutory declaration in writing, that the call in respect of a share was made and notice thereof given, and that default in payment of the call was made, and that the forfeiture of the share was made by a resolution of the directors to that effect, shall be sufficient evidence of the facts therein stated, as against all persons entitled to such share, and such declaration and the receipt of the company for the price of such share shall constitute a good title to such share, and a certificate of proprietorship shall be delivered to a purchaser, and thereupon he shall be deemed the holder of such share discharged from all calls due prior to such purchase, and he shall not be bound to see to the application of the purchase money, nor shall his title to such share be affected by any irregularity in the proceedings in reference to such sale.

Conversion of Shares into Stock.

23. The directors may, with the sanction of the company previously given in general meeting, convert any paid-up shares into stock.

24. When any shares have been converted into stock, the several holders of such stock may thenceforth transfer their respective interests therein, or any part of such interests, in the same manner and subject to the same regulations as and subject to which any shares in the capital of the company may be transferred, or as near thereto as circumstances admit.

25. The several holders of stock shall be entitled to participate in the dividends and profits of the company according to the amount of their respective interests in such stock; and such interests shall, in proportion to the amount thereof, confer on the holders thereof respectively the same privileges and advantages for the purpose of voting at meetings of the company, and for other purposes, as would have been conferred by shares of equal amount in the capital of the company; but so that none of such privileges or advantages, except the participation in the dividends and profits of the company, shall be conferred by any such aliquot part of consolidated stock as would not, if existing in shares, have conferred such privileges or advantages.

Increase in Capital.

26. The directors may, with the sanction of a special resolution of the company previously given in general meeting, increase its capital by the issue of new shares, such aggregate increase to be of such amount, and to be divided into shares of such respective amounts, as the company in general meeting directs, or, if no direction is given, as the directors think expedient.

27. Subject to any direction to the contrary that may be given by the meeting that sanctions the increase of capital, all new shares shall be offered to the members in proportion to the existing shares held by them, and such offer shall be made by notice specifying the number of shares to which the member is entitled, and limiting a time within which the offer, if not accepted, will be deemed to be declined, and after the expiration of such time, or on the receipt of an intimation from the member to whom such notice is given that he declines to accept the shares offered, the directors may dispose of the same in such manner as they think most beneficial to the company.

28. Any capital raised by the creation of new shares shall be considered as part of the original capital, and shall be subject to the same provisions with reference to the payment of calls, and the forfeiture of shares on non-payment of calls, or otherwise, as if it had been part of the original capital.

General Meetings.

29. The first general meeting shall be held at such time, not being more than six months after the registration of the company, and at such place, as the directors may determine.

30. Subsequent general meetings shall be held at such time and place as may be prescribed by the company in general meeting; and if no other time or place is prescribed, a general meeting shall be held on the first Monday in February in every year, at such place as may be determined by the directors.

31. The above-mentioned general meetings shall be called ordinary meetings; all other general meetings shall be called extraordinary.

32. The directors may, whenever they think fit, and they shall upon a requisition made in writing by not less than one-fifth in number of the members of the company, convene an extraordinary general meeting.

33. Any requisition made by the members

shall express the object of the meeting proposed to be called, and shall be left at the registered office of the company.

34. Upon the receipt of such requisition the directors shall forthwith proceed to convene an extraordinary general meeting. If they do not proceed to convene the same within twenty-one days from the date of the requisition, the requisitionists, or any other members amounting to the required number, may themselves convene an extraordinary general meeting.

Proceedings at General Meetings.

35. Seven days' notice at the least, specifying the place, the day, and the hour of meeting, and in case of special business the general nature of such business, shall be given to the members in manner herein-after mentioned, or in such other manner, if any, as may be prescribed by the company in general meeting; but the non-receipt of such notice by any member shall not invalidate the proceedings at any general meeting.

36. All business shall be deemed special that is transacted at an extraordinary meeting, and all that is transacted at an ordinary meeting, with the exception of sanctioning a dividend and the consideration of the accounts, balance-sheets, and the ordinary report of the directors.

37. No business shall be transacted at any general meeting, except the declaration of a dividend, unless a quorum of members is present at the time when the meeting proceeds to business; and such quorum shall be ascertained as follows: that is to say, if the persons who have taken shares in the company at the time of the meeting do not exceed ten in number, the quorum shall be five; if they exceed ten there shall be added to the above quorum one for every five additional members up to fifty, and one for every ten additional members after fifty, with this limitation, that no quorum shall in any case exceed twenty.

38. If within one hour from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of members, shall be dissolved: In any other case it shall stand adjourned to the same day in the next week, at the same time and place; and if at such adjourned meeting a quorum is not present, it shall be adjourned *sine die*.

39. The chairman (if any) of the board of directors shall preside as chairman at every general meeting of the company.

40. If there is no such chairman, or if at any meeting he is not present within fifteen minutes after the time appointed for holding the meeting, the members present shall choose some one of their number to be chairman.

41. The chairman may, with the consent of the meeting, adjourn any meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

42. At any general meeting, unless a poll is demanded by at least five members, a declaration by the chairman that a resolution has been carried, and an entry to that effect in the book of proceedings of the company, shall be sufficient evidence of the fact, without proof of the number

or proportion of the votes recorded in favour of or against such resolution.

43. If a poll is demanded by five or more members it shall be taken in such manner as the chairman directs, and the result of such poll shall be deemed to be the resolution of the company in general meeting. In the case of an equality of votes at any general meeting the chairman shall be entitled to a second or casting vote.

Votes of Members.

44. Every member shall have one vote for every share up to ten: He shall have an additional vote for every five shares beyond the first ten shares up to one hundred, and an additional vote for every ten shares beyond the first hundred shares.

45. If any member is a lunatic or idiot he may vote by his committee, curator bonis, or other legal curator.

46. If one or more persons are jointly entitled to a share or shares, the member whose name stands first in the register of members as one of the holders of such share or shares, and no other, shall be entitled to vote in respect of the same.

47. No member shall be entitled to vote at any general meeting unless all calls due from him have been paid, and no member shall be entitled to vote in respect of any share that he has acquired by transfer at any meeting held after the expiration of three months from the registration of the company, unless he has been possessed of the share in respect of which he claims to vote for at least three months previously to the time of holding the meeting at which he proposes to vote.

48. Votes may be given either personally or by proxy.

49. The instrument appointing a proxy shall be in writing, under the hand of the appointor, or if such appointor is a corporation, under their common seal, and shall be attested by one or more witnesses or witnesses: No person shall be appointed a proxy who is not a member of the company.

50. The instrument appointing a proxy shall be deposited at the registered office of the company not less than seventy-two hours before the time for holding the meeting at which the person named in such instrument proposes to vote, but no instrument appointing a proxy shall be valid after the expiration of twelve months from the date of its execution.

51. Any instrument appointing a proxy shall be in the following form:—

Company Limited.

I, _____ of _____ in the county of _____
being a member of the _____ Company
Limited, and entitled to _____ vote or
votes, hereby appoint _____ of _____
as my proxy, to vote for me and on my behalf
at the [ordinary or extraordinary, as the case
may be] general meeting of the company, to be
held on the _____ day of _____, and at any
adjournment thereof [or, at any meeting of the
company that may be held in the year _____].

As witness my hand, this _____ day of _____

Signed by the said _____ in the presence
of _____

Directors.

52. The number of the directors, and the names of the first directors, shall be determined by the subscribers of the memorandum of association.

53. Until directors are appointed the subscribers of the memorandum of association shall be deemed to be directors.

54. The future remuneration of the directors, and their remuneration for services performed previously to the first general meeting, shall be determined by the company in general meeting.

Powers of Directors.

55. The business of the company shall be managed by the directors, who may pay all expenses incurred in getting up and registering the company, and may exercise all such powers of the company as are not by the foregoing Act, or by these articles, required to be exercised by the company in general meeting, subject nevertheless to any regulations of these articles, to the provisions of the foregoing Act, and to such regulations, being not inconsistent with the aforesaid regulations or provisions, as may be prescribed by the company in general meeting; but no regulation made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if such regulation had not been made.

56. The continuing directors may act notwithstanding any vacancy in their body.

Disqualification of Directors.

57. The office of director shall be vacated—

If he holds any other office or place of profit under the company;

If he becomes bankrupt or insolvent;

If he is concerned in or participates in the profits of any contract with the company:

But the above rules shall be subject to the following exceptions: That no director shall vacate his office by reason of his being a member of any company which has entered into contracts with or done any work for the company of which he is director; nevertheless he shall not vote in respect of such contract or work; and if he does so vote his vote shall not be counted.

Rotation of Directors.

58. At the first ordinary meeting after the registration of the company the whole of the directors shall retire from office; and at the first ordinary meeting in every subsequent year one-third of the directors for the time being, or if their number is not a multiple of three, then the number nearest to one-third, shall retire from office.

59. The one-third or other nearest number to retire during the first and second years ensuing the first ordinary meeting of the company shall, unless the directors agree among themselves, be determined by ballot: In every subsequent year the one-third or other nearest number who have been longest in office shall retire.

60. A retiring director shall be re-eligible.

61. The company at the general meeting at which any directors retire in manner aforesaid

shall fill up the vacated offices by electing a like number of persons.

62. If at any meeting at which an election of directors ought to take place the places of the vacating directors are not filled up, the meeting shall stand adjourned till the same day in the next week, at the same time and place; and if at such adjourned meeting the places of the vacating directors are not filled up, the vacating directors, or such of them as have not had their places filled up, shall continue in office until the ordinary meeting in the next year, and so on from time to time until their places are filled up.

63. The company may from time to time, in general meeting, increase or reduce the number of directors, and may also determine in what rotation such increased or reduced number is to go out of office.

64. Any casual vacancy occurring in the board of directors may be filled up by the directors, but any person so chosen shall retain his office so long only as the vacating director would have retained the same if no vacancy had occurred.

65. The company, in general meeting, may, by a special resolution, remove any director before the expiration of his period of office, and may by an ordinary resolution appoint another person in his stead: The person so appointed shall hold office during such time only as the director in whose place he is appointed would have held the same if he had not been removed.

Proceedings of Directors.

66. The directors may meet together for the despatch of business, adjourn, and otherwise regulate their meetings as they think fit, and determine the quorum necessary for the transaction of business: Questions arising at any meeting shall be decided by a majority of votes: In case of an equality of votes the chairman shall have a second or casting vote: A director may at any time summon a meeting of the directors.

67. The directors may elect a chairman of their meetings, and determine the period for which he is to hold office; but if no such chairman is elected, or if at any meeting the chairman is not present at the time appointed for holding the same, the directors present shall choose some one of their number to be chairman of such meeting.

68. The directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit: any committee so formed shall, in the exercise of the powers so delegated, conform to any regulations that may be imposed on them by the directors.

69. A committee may elect a chairman of their meetings: If no such chairman is elected, or if he is not present at the time appointed for holding the same, the members present shall choose one of their number to be chairman of such meeting.

70. A committee may meet and adjourn as they think proper: Questions arising at any meeting shall be determined by a majority of votes of the members present; and in case of an equality of votes the chairman shall have a second or casting vote.

71. All acts done by any meeting of the directors, or of a committee of directors, or by any person acting as a director, shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such directors or persons acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director.

Dividends.

72. The directors may, with the sanction of the company in general meeting, declare a dividend to be paid to the members in proportion to their shares.

73. No dividend shall be payable except out of the profits arising from the business of the company.

74. The directors may, before recommending any dividend, set aside out of the profits of the company such sum as they think proper as a reserve fund to meet contingencies, or for equalising dividends, or for repairing or maintaining the works connected with the business of the company, or any part thereof; and the directors may invest the sum so set apart as a reserved fund upon such securities as they may select.

75. The directors may deduct from the dividends payable to any member all such sums of money as may be due from him to the company on account of calls or otherwise.

76. Notice of any dividend that may have been declared shall be given to each member in manner herein-after mentioned; and all dividends unclaimed for three years, after having been declared, may be forfeited by the directors for the benefit of the company.

77. No dividend shall bear interest as against the company.

Accounts.

78. The directors shall cause true accounts to be kept,—

- Of the stock in trade of the company;
- Of the sums of money received and expended by the company, and the matter in respect of which such receipt and expenditure takes place; and
- Of the credits and liabilities of the company:

The books of account shall be kept at the registered office of the company, and, subject to any reasonable restrictions as to the time and manner of inspecting the same that may be imposed by the company in general meeting, shall be open to the inspection of the members during the hours of business.

79. Once at the least in every year the directors shall lay before the company in general meeting a statement of the income and expenditure for the past year, made up to a date not more than three months before such meeting.

80. The statement so made shall show, arranged under the most convenient heads, the amount of gross income, distinguishing the several sources from which it has been derived, and the amount of gross expenditure, distinguishing the expense of the establishment, salaries, and other like matters: Every item of expenditure fairly chargeable against the year's income shall be brought into account, so that a just balance of

profit and loss may be laid before the meeting; and in cases where any item of expenditure which may in fairness be distributed over several years has been incurred in any one year the whole amount of such item shall be stated, with the addition of the reasons why only a portion of such expenditure is charged against the income of the year.

81. A balance-sheet shall be made out in every year, and laid before the company in general meeting, and such balance-sheet shall contain a summary of the property and liabilities of the company arranged under the heads appearing in the form annexed to this table, or as near thereto as circumstances admit.

82. A printed copy of such balance-sheet shall, seven days previously to such meeting, be served on every member in the manner in which notices are herein-after directed to be served.

Audit.

83. Once at the least in every year the accounts of the company shall be examined, and the correctness of the balance-sheet ascertained, by one or more auditor or auditors.

84. The first auditors shall be appointed by the directors; subsequent auditors shall be appointed by the company in general meeting.

85. If one auditor only is appointed, all the provisions herein contained relating to auditors shall apply to him.

86. The auditors may be members of the company; but no person is eligible as an auditor who is interested otherwise than as a member in any transaction of the company; and no director or other officer of the company is eligible during his continuance in office.

87. The election of auditors shall be made by the company at their ordinary meeting in each year.

88. The remuneration of the first auditors shall be fixed by the directors; that of subsequent auditors shall be fixed by the company in general meeting.

89. Any auditor shall be re-eligible on his quitting office.

90. If any casual vacancy occurs in the office of any auditor appointed by the company, the directors shall forthwith call an extraordinary general meeting for the purpose of supplying the same.

91. If no election of auditors is made in man-

ner aforesaid the Board of Trade may, on the application of not less than five members of the company, appoint an auditor for the current year, and fix the remuneration to be paid to him by the company for his services.

92. Every auditor shall be supplied with a copy of the balance-sheet, and it shall be his duty to examine the same, with the accounts and vouchers relating thereto.

93. Every auditor shall have a list delivered to him of all books kept by the company, and shall at all reasonable times have access to the books and accounts of the company: He may, at the expense of the company, employ accountants or other persons to assist him in investigating such accounts, and he may in relation to such accounts examine the directors or any other officer of the company.

94. The auditors shall make a report to the members upon the balance-sheet and accounts, and in every such report they shall state whether, in their opinion, the balance-sheet is a full and fair balance-sheet, containing the particulars required by these regulations, and properly drawn up so as to exhibit a true and correct view of the state of the company's affairs, and in case they have called for explanations or information from the directors, whether such explanations or information have been given by the directors, and whether they have been satisfactory; and such report shall be read, together with the report of the directors, at the ordinary meeting.

Notices.

95. A notice may be served by the company upon any member either personally, or by sending it through the post in a prepaid letter addressed to such member at his registered place of abode.

96. All notices directed to be given to the members shall, with respect to any share to which persons are jointly entitled, be given to whichever of such persons is named first in the register of members; and notice so given shall be sufficient notice to all the holders of such share.

97. Any notice, if served by post, shall be deemed to have been served at the time when the letter containing the same would be delivered in the ordinary course of the post; and in proving such service it shall be sufficient to prove that the letter containing the notices was properly addressed and put into the post office.

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BALANCE-SHEET of the

Dr.

CAPITAL AND LIABILITIES		PROPERTY AND ASSETS	
I. CAPITAL.	Showing: The number of shares, The amount paid per share, If any arrears of calls, the nature of the defaulter, The particulars of any forfeited shares.	III. PROPERTY held by the Company.	Showing: Immovable property, distinguishing— (a.) Freehold land, (b.) " " buildings, (c.) Leasehold " " Movable property, distinguishing— (d.) Stock in trade, (e.) Plant, The cost to be stated with de- ductions for deterioration in value as charged to the reserve fund or profit and loss.
1.		7.	
2.		8.	
3.		9.	
4.		10.	
5.		11.	
6.		12.	
II. DEBTS AND LIABILITIES of the Com- pany.	Showing: The amount of loans on mortgages or debenture bonds, The amount of debts owing by the com- pany, distinguishing— (a.) Debts for which acceptances have been given, (b.) Debts to traders for supplies of stock in trade or other articles, (c.) Debts for law expenses, (d.) Debts for interest on debentures or other loans, (e.) Unclaimed dividends, (f.) Debts not enumerated above.	IV. DEBTS owing to the Com- pany.	Showing: Debts considered good for which the company hold bills or other se- curities, Debts considered good for which the com- pany hold no security, Debts considered doubtful and bad, Any debt due from a director or other officer of the company to be separately stated.
VI. RESERVE FUND.	Showing: The amount set aside from profits to meet contingencies.	V. CASH AND INVESTMENTS.	Showing: The nature of investment and rate of interest.
VII. PROFIT AND LOSS.	Showing: The disposable balances for payment of dividend, &c.	13.	The amount of cash, where lodged, and if bearing interest.
CONTINGENT LIABILITIES.	Claims against the company not acknow- ledged as debts, Monies for which the company is contin- gently liable.		

TABLE B.*

TABLE OF FEES to be paid to the REGISTRAR of JOINT STOCK COMPANIES by a Company having a Capital divided into Shares.

	£ s. d.
For registration of a company whose nominal capital does not exceed £2000, a fee of	2 0 0
For registration of a company whose nominal capital exceeds £2000, the above fee of £2, with the following additional fees, regulated according to the amount of nominal capital; (that is to say,)	

	£ s. d.
For every £1000 of nominal capital, or part of £1000, after the first £2000, up to £5000,	1 0 0
For every £1000 of nominal capital, or part of £1000, after the first £5000, up to £100,000,	0 5 0
For every £1000 of nominal capital, or part of £1000, after the first £100,000,	0 1 0
For registration of any increase of capital made after the first registration of the company, the same fees per £1000, or part of £1000, as would have been payable if such increased capital had formed part of the original capital at the time of registration.	
Provided that no company shall be liable to pay in respect of nominal capital on registration, or afterwards, any greater amount of fees than £50, taking into account in the case of fees payable on an increase of capital after registration the fees paid on registration.	
For registration of any existing company, except such companies as are by this Act exempted from payment of fees in respect of registration under this Act, the same fee as is charged for registering a new company.	
For registering any document hereby required or authorised to be registered, other than the memorandum of association,	0 5 0
For making a record of any fact hereby authorised or required to be recorded by the registrar of companies, a fee of	0 5 0

TABLE C.

TABLE OF FEES to be paid to the REGISTRAR of JOINT STOCK COMPANIES by a Company not having a Capital divided into Shares.

For registration of a company whose number of members, as stated in

	£ s. d.
the articles of association, does not exceed 20,	2 0 0
For registration of a company whose number of members, as stated in the articles of association, exceeds 20, but does not exceed 100,	5 0 0
For registration of a company whose number of members, as stated in the articles of association, exceeds 100, but is not stated to be unlimited, the above fee of £5, with an additional 5s. for every 50 members or less number than 50 members after the first 100	
For registration of a company in which the number of members is stated in the articles of association to be unlimited, a fee of	20 0 0
For registration of any increase on the number of members made after the registration of the company in respect of every 50 members, or less than 50 members, of such increase,	0 5 0
Provided that no one company shall be liable to pay on the whole a greater fee than £20 in respect of its number of members, taking into account the fee paid on the first registration of the company.	
For registration of any existing company, except such companies as are by this Act exempted from payment of fees in respect of registration under this Act, the same fee as is charged for registering a new company.	
For registering any document hereby required or authorised to be registered, other than the memorandum of association,	0 5 0
For making a record of any fact hereby authorised or required to be recorded by the registrar of companies, a fee of	0 5 0

FORM D.

FORM OF STATEMENT referred to in Part III. of the Act.

† The capital of the company is divided into _____ shares of _____ each.
 The number of shares issued is _____
 Calls to the amount of _____ pounds per share have been made, under which the sum of _____ pounds has been received.
 The liabilities of the company on the first day of January (or July) were—
 Debts owing to sundry persons by the company:
 On judgment, £ _____
 On specialty, £ _____
 On notes or bills, £ _____
 On simple contracts, £ _____
 On estimated liabilities, £ _____
 The assets of the company on that day were—
 Government securities [stating them], £ _____

* See Stamp Act 54 and 55 Vict., c. 39, § 112 and 113.

† If the company has no capital divided into shares the portion of the statement relating to capital and shares must be omitted.

Bills of exchange and promissory notes, £
Cash at the bankers, £
Other securities, £

SECOND SCHEDULE

FORM A.

**MEMORANDUM OF ASSOCIATION of a Company
limited by Shares.**

1st. The name of the company is "The Eastern Steam Packet Company, Limited."

2d. The registered office of the company will be situate in England.

3d. The objects for which the company is established are, "the conveyance of passengers and goods in ships or boats between such places as the company may from time to time determine, and the doing all such other things as are incidental or conducive to the attainment of the above object."

4th. The liability of the members is limited.

5th. The capital of the company is two hundred thousand pounds, divided into one thousand shares of two hundred pounds each.

Wz, the several persons whose names and addresses are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names.

Names, Addresses, and Descriptions of Subscribers.	Number of Shares taken by each Subscriber.
1. John Jones of the county of _____, merchant	200
2. John Smith of the county of _____	25
3. Thomas Green of the county of _____	30
4. John Thompson of the county of _____	40
5. Caleb White of the county of _____	15
6. Andrew Brown of the county of _____	5
7. Caesar White of the county of _____	10
Total shares taken .	325

Dated the 22d day of November 1861.

Witness to the above signatures,
A.B., No. 13 Hute Street, Clerkenwell,
Middlesex.

FORM B.

**MEMORANDUM and ARTICLES of ASSOCIATION of
a Company limited by Guarantee, and not
having a Capital divided into Shares.**

Memorandum of Association.

1st. The name of the company is "The Mutual London Marine Association, Limited."

2d. The registered office of the company will be situate in England.

3d. The objects for which the company is established are, "the mutual insurance of ships belonging to members of the company, and the doing all such other things as are incidental or conducive to the attainment of the above objects."

4th. Every member of the company undertakes to contribute to the assets of the company in the event of the same being wound up during the time that he is a member, or within one year afterwards, for payment of the debts and liabilities of the company contracted before the time at which he ceases to be a member, and the costs, charges, and expenses of winding up the same, and for the adjustment of the rights of the contributories amongst themselves, such amount as may be required, not exceeding ten pounds.

WE, the several persons whose names and addresses are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association.

Names, Addresses, and Descriptions of Subscribers.

- | | |
|-------------------------------|------------------|
| 1. John Jones of
merchant. | in the county of |
| 2. John Smith of | in the county of |
| 3. Thomas Green of | in the county of |
| 4. John Thompson of | in the county of |
| 5. Caleb White of | in the county of |
| 6. Andrew Brown of | in the county of |
| 7. Caesar White of | in the county of |
- Dated the 22d day of November 1861.

Witness to the above signatures,
A.B., No. 13 Hute Street, Clerken-
well, Middlesex.

**ARTICLES of ASSOCIATION to accompany pre-
ceding MEMORANDUM of ASSOCIATION.**

1. The company, for the purpose of registration, is declared to consist of five hundred members.
2. The directors herein-after mentioned may, whenever the business of the association requires it, register an increase of members.

Definition of Members.

3. Every person shall be deemed to have agreed to become a member of the company who insures any ship or share in a ship in pursuance of the regulations herein-after contained.

General Meetings.

4. The first general meeting shall be held at such time, not being more than three months after the incorporation of company, and at such place, as the directors may determine.

5. Subsequent general meetings shall be held at such time and place as may be prescribed by the company in general meeting; and if no other time or place is prescribed, a general meeting shall be held on the first Monday in February in every year, at such place as may be determined by the directors.

6. The above-mentioned general meetings shall be called ordinary meetings; all other general meetings shall be called extraordinary.

7. The directors may, whenever they think

at, and they shall, upon a requisition made in writing by any five or more members, convene an extraordinary general meeting.

8. Any requisition made by the members shall express the object of the meeting proposed to be called, and shall be left at the registered office of the company.

9. Upon the receipt of such requisition the directors shall forthwith proceed to convene a general meeting: If they do not proceed to convene the same within twenty-one days from the date of the requisition, the requisitionists, or any other five members, may themselves convene a meeting.

Proceedings at General Meetings.

10. Seven days' notice at the least, specifying the place, the day, and the hour of meeting, and in case of special business the general nature of such business, shall be given to the members in manner herein-after mentioned, or in such other manner, if any, as may be prescribed by the company in general meeting; but the non-receipt of such notice by any member shall not invalidate the proceedings at any general meeting.

11. All business shall be deemed special that is transacted at an extraordinary meeting, and all that is transacted at an ordinary meeting, with the exception of the consideration of the accounts, balance-sheets, and the ordinary report of the directors.

12. No business shall be transacted at any meeting except the declaration of a dividend, unless a quorum of members is present at the commencement of such business; and such quorum shall be ascertained as follows; that is to say, if the members of the company at the time of the meeting do not exceed ten in number, the quorum shall be five; if they exceed ten there shall be added to the above quorum one for every five additional members up to fifty, and one for every ten additional members after fifty, with this limitation, that no quorum shall in any case exceed thirty.

13. If within one hour from the time appointed for the meeting a quorum of members is not present, the meeting, if convened upon the requisition of the members, shall be dissolved: In any other case it shall stand adjourned to the same day in the following week at the same time and place; and if at such adjourned meeting a quorum of members is not present, it shall be adjourned *sine die*.

14. The chairman (if any) of the directors shall preside as chairman at every general meeting of the company.

15. If there is no such chairman, or if at any meeting he is not present at the time of holding the same, the members present shall choose some one of their number to be chairman of such meeting.

16. The chairman may, with the consent of the meeting, adjourn any meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

17. At any general meeting, unless a poll is demanded by at least five members, a declaration

by the chairman that a resolution has been carried, and an entry to that effect in the book of proceedings of the company, shall be sufficient evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against such resolution.

18. If a poll is demanded in manner aforesaid, the same shall be taken in such manner as the chairman directs, and the result of such poll shall be deemed to be the resolution of the company in general meeting.

Votes of Members.

19. Every member shall have one vote and no more.

20. If any member is a lunatic or idiot he may vote by his committee, curator bonis, or other legal curator.

21. No member shall be entitled to vote at any meeting unless all monies due from him to the company have been paid.

22. Votes may be given either personally or by proxies: A proxy shall be appointed in writing under the hand of the appointor, or if such appointor is a corporation, under its common seal.

23. No person shall be appointed a proxy who is not a member, and the instrument appointing him shall be deposited at the registered office of the company not less than forty-eight hours before the time of holding the meeting at which he proposes to vote.

24. Any instrument appointing a proxy shall be in the following form:—

Company Limited.

I, _____ of _____ in the county of _____ being a member of the _____ Company Limited, hereby appoint _____ of _____ as my proxy, to vote for me and on my behalf at the [ordinary or extraordinary, as the case may be] general meeting of the company, to be held on the _____ day of _____ and at any adjournment thereof to be held on the _____ day of _____ next [or, at any meeting of the company that may be held in the year _____].
As witness my hand, this _____ day of _____
Signed by the said _____ in the presence of _____

Directors.

25. The number of the directors, and the names of the first directors, shall be determined by the subscribers of the memorandum of association.

26. Until directors are appointed, the subscribers of the memorandum of association shall for all the purposes of this Act be deemed to be directors.

Powers of Directors.

27. The business of the company shall be managed by the directors, who may exercise all such powers of the company as are not hereby required to be exercised by the company in general meeting; but no regulation made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if such regulation had not been made.

Election of Directors.

28. The directors shall be elected annually by the company in general meeting.

Business of Company.

[Here insert rules as to mode in which business of insurance is to be conducted.]

Accounts.

29. The accounts of the company shall be audited by a committee of five members, to be called the audit committee.

30. The first audit committee shall be nominated by the directors out of the body of members.

31. Subsequent audit committees shall be nominated by the members at the ordinary general meeting in each year.

32. The audit committee shall be supplied with a copy of the balance-sheet, and it shall be their duty to examine the same with the accounts and vouchers relating thereto.

33. The audit committee shall have a list delivered to them of all books kept by the company, and they shall at all reasonable times have access to the books and accounts of the company: They may, at the expense of the company, employ accountants or other persons to assist them in investigating such accounts, and they may in relation to such accounts examine the directors or any other officer of the company.

34. The audit committee shall make a report to the members upon the balance-sheet and accounts, and in every such report they shall state whether in their opinion the balance-sheet is a full and fair balance-sheet, containing the particulars required by these regulations of the company, and properly drawn up, so as to exhibit a true and correct view of the state of the company's affairs, and in case they have called for explanation or information from the directors, whether such explanations or information have been given by the directors, and whether they have been satisfactory, and such report shall be read together with the report of the directors at the ordinary meeting.

Notices.

35. A notice may be served by the company upon any member either personally, or by sending it through the post in a prepaid letter addressed to such member at his registered place of abode.

36. Any notice, if served by post, shall be deemed to have been served at the time when the letter containing the same would be delivered in the ordinary course of the post; and in proving such service it shall be sufficient to prove that the letter containing the notice was properly addressed, and put into the post office.

Winding up.

37. The company shall be wound up voluntarily whenever an extraordinary resolution, as defined by the Companies Act, 1862, is passed, requiring the company to be wound up voluntarily.

Names, Addresses, and Descriptions of Subscribers.

1. John Jones of in the county of merchant,
2. John Smith of in the county of
3. Thomas Green of in the county of
4. John Thompson of in the county of
5. Caleb White of in the county of
6. Andrew Brown of in the county of
7. Caesar White of in the county of

Dated the 22d day of November 1861.

Witness to the above signatures,

A.B., No. 13 Hute Street, Clerkenwell, Middlesex.

FORM C.

MEMORANDUM and ARTICLES of ASSOCIATION of a Company limited by Guarantee, and having a Capital divided into Shares.

Memorandum of Association.

1st. The name of the company is "The Highland Hotel Company, Limited."

2d. The registered office of the company will be situate in Scotland.

3d. The objects for which the company is established are "the facilitating travelling in the Highlands of Scotland, by providing hotels and conveyances by sea and by land for the accommodation of travellers, and the doing all such other things as are incidental or conducive to the attainment of the above object."

4th. Every member of the company undertakes to contribute to the assets of the company in the event of the same being wound up during the time that he is a member, or within one year afterwards, for payment of the debts and liabilities of the company contracted before the time at which he ceases to be a member, and the costs, charges, and expenses of winding up the same, and for the adjustment of the rights of the contributories amongst themselves, such amount as may be required not exceeding twenty pounds.

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association.

Names, Addresses, and Descriptions of Subscribers.

1. John Jones of in the county of merchant,
2. John Smith of in the county of
3. Thomas Green of in the county of
4. John Thompson of in the county of
5. Caleb White of in the county of
6. Andrew Brown of in the county of
7. Caesar White of in the county of

Dated the 22d day of November 1861.

Witness to the above signatures,

A.B., No. 13 Hute Street, Clerkenwell, Middlesex.

Articles of Association to accompany preceding Memorandum of Association.

1. The capital of the company shall consist of five hundred thousand pounds, divided into five thousand shares of one hundred pounds each.

2. The directors may, with the sanction of the company in general meeting, reduce the amount of shares.

3. The directors may, with the sanction of the company in general meeting, cancel any shares belonging to the company.

4. All the articles of Table A shall be deemed to be incorporated with these articles, and to apply to the company.

W^m, the several persons whose names and addresses are subscribed, agree to take the number of shares in the capital of the company set opposite our respective names.

Names, Addresses, and Descriptions of Subscribers.		Number of Shares taken by each Subscriber.
1. John Jones of	in the county of	200
2. John Smith of	in the county of	25
3. Thomas Green of	in the county of	30
4. John Thompson of	in the county of	40
5. Caleb White of	in the county of	15
6. Andrew Brown of	in the county of	5
Cæsar White of	in the county of	10
Total shares taken		325

Dated the 22d day of November 1861.

Witness to the above signatures,
A.B., No. 13 Hute Street, Clerkenwell,
Middlesex.

FORM D.

MEMORANDUM and ARTICLES of ASSOCIATION of an unlimited Company, having a Capital divided into Shares.

Memorandum of Association.

1st. The name of the company is "The Patent Stereotype Company."

2d. The registered office of the company will be situate in England.

3d. The objects for which the company is established are "the working of a patent method of founding and casting stereotype plates, of which method John Smith, of London, is the sole patentee."

W^m, the several persons whose names are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association.

Names, Addresses, and Descriptions of Subscribers.

1. John Jones of in the county of merchant.
2. John Smith of in the county of
3. Thomas Green of in the county of
4. John Thompson of in the county of
5. Caleb White of in the county of
6. Andrew Brown of in the county of
7. Abel Brown of in the county of

Dated 22d day of November 1861.

Witness to the above signatures,
A.B., No. 20 Bond Street, Middlesex.

Articles of Association to accompany the preceding Memorandum of Association.

Capital of the Company.

The capital of the company is two thousand pounds, divided into twenty shares of one hundred pounds each.

Application of Table A.

All the articles of Table A shall be deemed to be incorporated with these articles, and to apply to the company.

W^m, the several persons whose names and addresses are subscribed, agree to take the number of shares in the capital of the company set opposite our respective names.

Names, Addresses, and Descriptions of Subscribers.		Number of Shares taken by Subscribers.
1. John Jones of	in the county of , merchant,	1
2. John Smith of	in the county of	5
3. Thomas Green of	in the county of	2
4. John Thompson of	in the county of	2
5. Caleb White of	in the county of	3
6. Andrew Brown of	in the county of	4
7. Abel Brown of	in the county of	1
Total shares taken		18

Dated the 22d day of November 1861.

Witness to the above signatures,
A.B., No. 20 Bond Street, Middlesex.

FORM F.

LICENSE TO HOLD LANDS

The Lords of the Committee of Privy Council appointed for the consideration of matters relating to trade and foreign plantations hereby license the Association, Limited, to hold the lands hereunder described [*insert description of lands*]. The conditions of this license are [*insert conditions, if any*].

THIRD SCHEDULE.

FIRST PART.

DATE AND CHAPTER OF ACT.	TITLE OF ACT.
21 & 22 Geo. 3, c. 48, . (Parliament of Ireland.) 7 & 8 Vict., c. 110, . .	An Act to promote Trade and Manufactures by regulating and encouraging Partnerships. An Act for the Registration, Incorporation, and Regulation of Joint Stock Companies.
7 & 8 Vict., c. 111, . .	An Act for facilitating the winding up the Affairs of Joint Stock Companies unable to meet their pecuniary Engagements.
7 & 8 Vict., c. 113, . .	An Act to regulate Joint Stock Banks in England.
8 & 9 Vict., c. 98, . .	An Act for facilitating the winding up the Affairs of Joint Stock Companies in Ireland unable to meet their pecuniary Engagements.
9 & 10 Vict., c. 28, . .	An Act to facilitate the Dissolution of certain Railway Companies.
9 & 10 Vict., c. 75, . .	An Act to regulate Joint Stock Banks in Scotland and Ireland.
10 & 11 Vict., c. 78, . .	An Act to amend an Act for the Registration, Incorporation, and Regulation of Joint Stock Companies.
11 & 12 Vict., c. 45, . .	An Act to amend the Acts for facilitating the winding up the Affairs of Joint Stock Companies unable to meet their pecuniary Engagements, and also to facilitate the dissolution and winding up of Joint Stock Companies and other Partnerships.
12 & 13 Vict., c. 108, .	An Act to amend the Joint Stock Companies Winding-up Act, 1848.
19 & 20 Vict., c. 47, .	An Act for the Incorporation and Regulation of Joint Stock Companies and other Associations.
20 & 21 Vict., c. 14, .	An Act to amend the Joint Stock Companies Act, 1856.
20 & 21 Vict., c. 49, .	An Act to amend the Law relating to Banking Companies.
20 & 21 Vict., c. 78, .	An Act to amend the Act Seven and Eight Victoria, chapter One hundred and eleven, for facilitating the winding up the Affairs of Joint Stock Companies unable to meet their pecuniary Engagements, and also the Joint Stock Companies Winding-up Act, 1848 and 1849.
20 & 21 Vict., c. 80, .	An Act to amend the Joint Stock Companies Act, 1856.
21 & 22 Vict., c. 60, .	An Act to amend the Joint Stock Companies Act, 1856 and 1857, and the Joint Stock Banking Companies Act, 1857.
21 & 22 Vict., c. 91, .	An Act to enable Joint Stock Banking Companies to be formed on the principle of Limited Liability.

Repeated 1803.

SECOND PART.

7 and 8 Vict., c. 113, s. 47.

Existing companies to have the powers of suing and being sued.—Every company of more than six persons established on the sixth day of May one thousand eight hundred and forty-four, for the purpose of carrying on the trade or business of bankers within the distance of sixty-five miles from London, and not within the provisions of the Act passed in the session holden in the seventh and eighth years of the reign of Her present Majesty, chapter one hundred and thirteen, shall have the same powers and privileges of suing and being sued in the name of any one of the public officers of such copartnership as the nominal plaintiff, petitioner, or defendant on behalf of such copartnership; and all judgments, decrees, and orders made and obtained in any such suit may be enforced in like manner as is

provided with respect to such companies carrying on the said trade or business at any place in England exceeding the distance of sixty-five miles from London under the provisions of an Act passed in the seventh year of the reign of King George the Fourth, chapter forty-six, intitled "An Act for the better regulating Copartnerships of certain Bankers in England, and for amending so much of an Act of the Thirtieth and Fortieth Years of the Reign of His late Majesty King George the Third, intitled 'An Act for establishing an Agreement with the Governor and Company of the Bank of England for advancing the Sum of Three Millions towards the supply for the Service of the Year One thousand eight hundred,' as relates to the same," provided that such first-mentioned company shall make out and deliver from time to time to the Commissioners of Stamps and Taxes the several accounts or returns required by the

last-mentioned Act, and all the provisions of the last-recited Act as to such accounts or returns shall be taken to apply to the accounts or returns so made out and delivered by such first-mentioned companies as if they had been originally included in the provisions of the last-recited Act.

20 and 21 Vict., c. 49, Part of Section 12.

Power to form banking partnerships of ten persons.—Notwithstanding anything contained in any Act passed in the session holden in the

seventh and eighth years of the reign of Her present Majesty, chapter one hundred and thirteen, and intituled "An Act to regulate Joint Stock Banks in England," or in any other Act, it shall be lawful for any number of persons, not exceeding ten, to carry on in partnership the business of banking, in the same manner and upon the same conditions in all respects as any company of not more than six persons could before the passing of this Act have carried on such business.

ACT OF PARLIAMENT

TO

A mend "The Companies Act, 1862."—[30 and 31 Vict., cap. 131.—20th August 1867.]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Preliminary.

I. Short title.—This Act may be cited for all purposes as "The Companies Act, 1867."

II. Act to be construed as one with 25 and 26 Vict., c. 89.—The Companies Act, 1862, is hereinafter referred to as the "principal Act;" and the principal Act and this Act are hereinafter distinguished as and may be cited for all purposes as "The Companies Acts, 1862 and 1867;" and this Act shall, so far as is consistent with the tenor thereof, be construed as one with the principal Act; and the expression "this Act" in the principal Act, and any expression referring to the principal Act which occurs in any Act or other document, shall be construed to mean the principal Act as amended by this Act.

III. Commencement of Act.—This Act shall come into force on the first day of September one thousand eight hundred and sixty-seven, which date is hereinafter referred to as the commencement of this Act.

Unlimited Liability of Directors.

IV. Company may have directors with unlimited liability.—Where after the commencement of this Act a company is formed as a limited company under the principal Act, the liability of the directors or managers of such company, or the managing director, may, if so provided by the memorandum of association, be unlimited.

V. Liability of director, past and present, where liability is unlimited.—The following modifications shall be made in the thirty-eighth section of the principal Act, with respect to the contributions to be required in the event of the winding up of a limited company under the principal Act, from any director or manager whose liability is, in pursuance of this Act, unlimited:

- (1) Subject to the provisions herein-after contained, any such director or manager, whether past or present, shall, in addition to his liability (if any) to contribute as an ordinary member, be liable to contribute as if he were at the date of the commencement of such winding up a member of an unlimited company:
- (2) No contribution required from any past director or manager who has ceased to hold such office for a period of one year or upwards prior to the commencement of the winding up shall exceed the amount (if any) which he is liable to contribute as an ordinary member of the company:
- (3) No contribution required from any past director or manager in respect of any debt or liability of the company contracted after the time at which he ceased to hold such office shall exceed the amount (if any) which he is liable to contribute as an ordinary member of the company:
- (4) Subject to the provisions contained in the regulations of the company, no contribution required from any director or manager shall exceed the amount (if any) which he is liable to contribute as an ordinary member, unless the court deems it necessary to require such contribution in order to satisfy the debts and liabilities of the company, and the costs, charges, and expenses of the winding up.

VI. Director with unlimited liability may have set off as under act, 101 of 25 and 26 Vict., c. 90.—In the event of the winding up of any limited company, the court, if it think fit, may make to any director or manager of such company whose liability is unlimited the same allowance by way of set-off as under the one hundred and first section of the principal Act it may make to a contributory where the company is not limited.

VII. Notice to be given to director on his election that his liability will be unlimited.—In any limited company in which, in pursuance of this Act, the liability of a director or manager is

unlimited, the directors or managers of the company (if any), and the member who proposes any person for election or appointment to such office, shall add to such proposal a statement that the liability of the person holding such office will be unlimited, and the promoters, directors, managers, and secretary (if any) of such company, or one of them, shall, before such person accepts such office or acts therein, give him notice in writing that his liability will be unlimited.

If any director, manager, or proposer make default in adding such statement, or if any promoter, director, manager, or secretary make default in giving such notice, he shall be liable to a penalty not exceeding one hundred pounds, and shall also be liable for any damage which the person so elected or appointed may sustain from such default, but the liability of the person elected or appointed shall not be affected by such default.

VIII. Existing limited company may, by special resolution, make liability of directors unlimited.—Any limited company under the principal Act, whether formed before or after the commencement of this Act, may, by a special resolution, if authorised so to do by its regulations, as originally framed or as altered by special resolution, from time to time modify the conditions contained in its memorandum of association so far as to render unlimited the liability of its directors or managers, or of the managing directors; and such special resolution shall be of the same validity as if it had been originally contained in the memorandum of association, and a copy thereof shall be embodied in or annexed to every copy of the memorandum of association which is issued after the passing of the resolution, and any default in this respect shall be deemed to be a default in complying with the provisions of the fifty-fourth section of the principal Act, and shall be punished accordingly.

Reduction of Capital and Shares.

IX. Power to company to reduce capital.—Any company limited by shares may, by special resolution, so far modify the conditions contained in its memorandum of association, if authorised so to do by its regulations as originally framed or as altered by special resolution, as to reduce its capital; but no such resolution for reducing the capital of any company shall come into operation until an order of the court is registered by the registrar of joint stock companies, as is herein-after mentioned.

X. Company to add "and reduced" to its name for a limited period.—The company shall, after the date of the passing of any special resolution for reducing its capital, add to its name, until such date as the court may fix, the words, "and reduced," as the last words in its name, and those words shall, until such date, be deemed to be part of the name of the company within the meaning of the principal Act.

XI. Company to apply to the court for an order confirming reduction.—A company which has passed a special resolution for reducing its capital, may apply to the court by petition for

an order confirming the reduction, and on the hearing of the petition the court, if satisfied that with respect to every creditor of the company who under the provisions of this Act is entitled to object to the reduction, either his consent to the reduction has been obtained, or his debt or claim has been discharged or has been determined, or has been secured as herein-after provided, may make an order confirming the reduction on such terms and subject to such conditions as it deems fit.

XII. Definition of the court.—The expression "the court," shall in this Act mean the court which has jurisdiction to make an order for winding up the petitioning company, and the eighty-first and eighty-third sections of the principal Act shall be construed as if the term "winding up" in those sections included proceedings under this Act, and the court may in any proceedings under this Act make such order as to costs as it deems fit.

XIII. Creditors may object to reduction, and list of objecting creditors to be settled by the court.

—Where a company proposes to reduce its capital, every creditor of the company who at the date fixed by the court is entitled to any debt or claim which, if that date were the commencement of the winding up of the company, would be admissible in proof against the company, shall be entitled to object to the proposed reduction, and to be entered in the list of creditors who are so entitled to object.

The court shall settle a list of such creditors, and for that purpose shall ascertain as far as possible without requiring an application from any creditor the names of such creditors and the nature and amount of their debts or claims, and may publish notices fixing a certain day or days within which creditors of the company who are not entered on the list are to claim to be so entered or to be excluded from the right of objecting to the proposed reduction.

XIV. Court may dispense with consent of creditor on security being given for his debt.—Where a creditor whose name is entered on the list of creditors, and whose debt or claim is not discharged or determined, does not consent to the proposed reduction, the court may (if it think fit) dispense with such consent on the company securing the payment of the debt or claim of such creditor by setting apart and appropriating in such manner as the court may direct, a sum of such amount as is herein-after mentioned; (that is to say,)

- (1.) If the full amount of the debt or claim of the creditor is admitted by the company, or, though not admitted, is such as the company are willing to set apart and appropriate, then the full amount of the debt or claim shall be set apart and appropriated.
- (2.) If the full amount of the debt or claim of the creditor is not admitted by the company, and is not such as the company are willing to set apart and appropriate, or if the amount is contingent or not ascertained, then the court may, if it think fit, inquire into and adjudicate upon the validity of such debt or claim, and the

amount for which the company may be liable in respect thereof, in the same manner as if the company were being wound up by the court, and the amount fixed by the court on such inquiry and adjudication shall be set apart and appropriated.

XV. Order and minute to be registered.—The registrar of joint stock companies, upon the production to him of an order of the court confirming the reduction of the capital of a company, and the delivery to him of a copy of the order and of a minute (approved by the court), showing with respect to the capital of the company, as altered by the order, the amount of such capital, the number of shares in which it is to be divided, and the amount of each share, shall register the order and minute, and on the registration the special resolution confirmed by the order so registered shall take effect.

Notice of such registration shall be published in such manner as the court may direct.

The registrar shall certify under his hand the registration of the order and minute, and his certificate shall be conclusive evidence that all the requisitions of this Act with respect to the reduction of capital have been complied with, and that the capital of the company is such as is stated in the minute.

XVI. Minute to form part of memorandum of association.—The minute when registered shall be deemed to be substituted for the corresponding part of the memorandum of association of the company, and shall be of the same validity and subject to the same alterations as if it had been originally contained in the memorandum of association; and, subject as in this Act mentioned, no member of the company, whether past or present, shall be liable in respect of any share to any call or contribution exceeding in amount the difference (if any) between the amount which has been paid on such share and the amount of the share as fixed by the minute.

XVII. Saving of rights of creditors who are ignorant of proceedings.—If any creditor who is entitled in respect of any debt or claim to object to the reduction of the capital of a company under this Act is, in consequence of his ignorance of the proceedings taken with a view to such reduction, or of their nature and effect with respect to his claim, not entered on the list of creditors, and after such reduction the company is unable, within the meaning of the eightieth section of the principal Act, to pay to the creditor the amount of such debt or claim, every person who was a member of the company at the date of the registration of the order and minute relating to the reduction of the capital of the company, shall be liable to contribute for the payment of such debt or claim an amount not exceeding the amount which he would have been liable to contribute if the company had commenced to be wound up on the day prior to such registration, and on the company being wound up, the court on the application of such creditor, and on proof that he was ignorant of the proceedings taken with a view to the reduction, or of their nature and effect with respect to his claim, may, if it think fit, settle a list of such

contributories accordingly, and make and enforce calls and orders on the contributories settled on such list in the same manner in all respects as if they were ordinary contributories in a winding up; but the provisions of this section shall not affect the rights of the contributories of the company among themselves.

XVIII. Copy of registered minute.—A minute when registered shall be embodied in every copy of the memorandum of association issued after its registration; and if any company makes default in complying with the provisions of this section it shall incur a penalty not exceeding one pound for each copy in respect of which such default is made, and every director and manager of the company who shall knowingly and wilfully authorise or permit such default shall incur the like penalty.

XIX. Penalty on concealment of name of creditor.—If any director, manager, or officer of the company wilfully conceals the name of any creditor of the company who is entitled to object to the proposed reduction, or wilfully misrepresents the nature or amount of the debt or claim of any creditor of the company, or if any director or manager of the company aids or abets in or is privy to any such concealment or misrepresentation as aforesaid, every such director, manager, or officer shall be guilty of a misdemeanor.

XX. Power to make rules extended to making rules concerning matters in this Act.—The powers of making rules concerning winding up conferred by the one hundred and seventieth, one hundred and seventy-first, one hundred and seventy-second, and one hundred and seventy-third sections of the principal Act shall respectively extend to making rules concerning matters in which jurisdiction is by this Act given to the court which has the power of making an order to wind up a company, and until such rules are made the practice of the court in matters of the same nature shall, so far as the same is applicable, be followed.

Subdivision of Shares.

XXI. Shares may be divided into shares of smaller amount.—Any company limited by shares may by special resolution so far modify the conditions contained in its memorandum of association, if authorised so to do by its regulations as originally framed or as altered by special resolution, as by subdivision of its existing shares or any of them, to divide its capital, or any part thereof, into shares of smaller amount than is fixed by its memorandum of association.

Provided, that in the subdivision of the existing shares the proportion between the amount which is paid and the amount (if any) which is unpaid on each share of reduced amount shall be the same as it was in the case of the existing share or shares from which the share of reduced amount is derived.

XXII. Special resolution to be embodied in memorandum of association.—The statement of the number and amount of the shares into which the capital of the company is divided contained

in every copy of the memorandum of association issued after the passing of any such special resolution, shall be in accordance with such resolution; and any company which makes default in complying with the provisions of this section shall incur a penalty not exceeding one pound for each copy in respect of which such default is made; and every director and manager of the company who knowingly or wilfully authorises or permits such default shall incur the like penalty.

Associations not for Profit.

XXIII. Special provisions as to associations formed for purposes not of gain.—Where any association is about to be formed under the principal Act as a limited company, if it proves to the Board of Trade that it is formed for the purpose of promoting commerce, art, science, religion, charity, or any other useful object, and that it is the intention of such association to apply the profits, if any, or other income of the association, in promoting its objects, and to prohibit the payment of any dividend to the members of the association, the Board of Trade may by license, under the hand of one of the secretaries or assistant secretaries, direct such association to be registered with limited liability, without the addition of the word limited to its name, and such association may be registered accordingly, and upon registration shall enjoy all the privileges and be subject to the obligations by this Act imposed on limited companies, with the exceptions that none of the provisions of this Act that require a limited company to use the word limited as any part of its name, or to publish its name, or to send a list of its members, directors, or managers to the registrar, shall apply to an association so registered.

The license by the Board of Trade may be granted upon such conditions and subject to such regulations as the Board think fit to impose, and such conditions and regulations shall be binding on the association, and may, at the option of the said Board, be inserted in the memorandum and articles of association, or in both or one of such documents.

Calls upon Shares.

XXIV. Company may have some shares fully paid and others not.—Nothing contained in the principal Act shall be deemed to prevent any company under that Act, if authorised by its regulations as originally framed or as altered by special resolution, from doing any one or more of the following things; namely—

- (1.) Making arrangements on the issue of shares for a difference between the holders of such shares in the amount of calls to be paid, and in the time of payment of such calls;
- (2.) Accepting from any member of the company who assents thereto the whole or a part of the amount remaining unpaid on any share or shares held by him, either in discharge of the amount of a call payable in respect of any other share or shares held by him or without any call having been made.

- (3.) Paying dividend in proportion to the amount paid up on each share in cases where a larger amount is paid up on some shares than on others.

XXV. Manner in which shares are to be issued and held.—Every share in any company shall be deemed and taken to have been issued and to be held subject to the payment of the whole amount thereof in cash, unless the same shall have been otherwise determined by a contract duly made in writing, and filed with the registrar of joint stock companies at or before the issue of such shares.

Transfer of Shares.

XXVI. Transfer may be registered at request of transferor.—A company shall on the application of the transferor of any share or interest in the company enter in its register of members the name of the transferee of such share or interest, in the same manner and subject to the same conditions as if the application for such entry were made by the transferee.

Share Warrants to Bearer.

XXVII. Warrant of limited shares fully paid up may be issued in name of bearer.—In the case of a company limited by shares, the company, if authorised so to do by its regulations, as originally framed or as altered by special resolution, and subject to the provisions of such regulations, may, with respect to any share which is fully paid up, or with respect to stock, issue under their common seal a warrant stating that the bearer of the warrant is entitled to the share or shares or stock therein specified, and may provide, by coupons or otherwise, for the payment of the future dividends on the share or shares or stock included in such warrant, hereinafter referred to as a share warrant.

XXVIII. Effect of share warrant.—A share warrant shall entitle the bearer of such warrant to the shares or stock specified in it, and such shares or stock may be transferred by the delivery of the share warrant.

XXIX. Re-registration of bearer of a share warrant in the register.—The bearer of a share warrant shall, subject to the regulations of the company, be entitled, on surrendering such warrant for cancellation, to have his name entered as a member in the register of members, and the company shall be responsible for any loss incurred by any person by reason of the company entering in its register of members the name of any bearer of a share warrant in respect of the shares or stock specified therein, without the share warrant being surrendered and cancelled.

XXX. Regulations of the company may make the bearer of a share warrant a member.—The bearer of a share warrant may, if the regulations of the company so provide, be deemed to be a member of the company within the meaning of the principal Act, either to the full extent or for such purposes as may be prescribed by the regulations:

Provided that the bearer of a share warrant shall not be qualified in respect of the shares or stock specified in such warrant for being a director or manager of the company in cases where such a qualification is prescribed by the regulations of the company.

XXXI. Entries in register where share warrant issued.—On the issue of a share warrant in respect of any share or stock the company shall strike out of its register of members the name of the member then entered therein as holding such share or stock as if he had ceased to be a member, and shall enter in the register the following particulars:

- (1.) The fact of the issue of the warrant:
- (2.) A statement of the shares or stock included in the warrant, distinguishing each share by its number:
- (3.) The date of the issue of the warrant:

And until the warrant is surrendered the above particulars shall be deemed to be the particulars which are required by the twenty-fifth section of the principal Act to be entered in the register of members of a company; and on the surrender of a warrant the date of such surrender shall be entered as if it were the date at which a person ceased to be a member.

XXXII. Particulars to be contained in annual summary.—After the issue by the company of a share warrant the annual summary required by the twenty-sixth section of the principal Act shall contain the following particulars,—the total amount of shares or stock for which share warrants are outstanding at the date of the summary, and the total amount of share warrants which have been issued and surrendered respectively since the last summary was made, and the number of shares or amount of stock comprised in each warrant.

XXXIII. Stamps on share warrants.—There shall be charged on every share warrant a stamp duty of an amount equal to three times the amount of the *ad valorem* stamp duty which would be chargeable on a deed transferring the share or shares or stock specified in the warrant, if the consideration for the transfer were the nominal value of such share or shares or stock.

XXXIV. Penalties on persons committing forgery.—Whosoever forges or alters, or offers, utters, disposes of, or puts off, knowing the same to be forged, or altered, any share warrant or coupon, or any document purporting to be a share warrant or coupon, issued in pursuance of this Act, or demands or endeavours to obtain or receive any share or interest of or in any company under the principal Act, or to receive any dividend or money payable in respect thereof, by virtue of any such forged or altered share warrant, coupon, or document, purporting as aforesaid, knowing the same to be forged or altered, with intent in any of the cases aforesaid to defraud, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for life or for any term not less than five years, or to be imprisoned for any term not ex-

ceeding two years, with or without hard labour, and with or without solitary confinement.

XXXV. Penalties on persons falsely personating owner of shares.—Whosoever falsely and deceitfully personates any owner of any share or interest of or in any company, or of any share warrant or coupon issued in pursuance of this Act, and thereby obtain or endeavours to obtain any such share or interest, or share warrant or coupon, or receives or endeavours to receive any money due to any such owner, as if such offender were the true and lawful owner, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for life or for any term not less than five years, or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.

XXXVI. Penalties on persons engraving plates, &c.—Whosoever, without lawful authority or excuse, the proof whereof shall be on the party accused, engraves or makes upon any plate, wood, stone, or other material any share warrant or coupon purporting to be a share warrant or coupon issued or made by any particular company under and in pursuance of this Act, or to be a blank share warrant or coupon issued or made as aforesaid, or to be a part of such a share warrant or coupon, or uses any such plate, wood, stone, or other material for the making or printing any such share warrant or coupon, or any such blank share warrant or coupon, or any part thereof respectively, or knowingly has in his custody or possession any such plate, wood, stone, or other material, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding fourteen years and not less than five years, or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.

Contracts.

XXXVII. Contracts, how made.—Contracts on behalf of any company under the principal Act may be made as follows; (that is to say,)

- (1.) Any contract which if made between private persons would be by law required to be in writing, and if made according to English law to be under seal, may be made on behalf of the company in writing under the common seal of the company, and such contract may be in the same manner varied or discharged:
- (2.) Any contract which if made between private persons would be by law required to be in writing, and signed by the parties to be charged therewith, may be made on behalf of the company in writing signed by any person acting under the express or implied authority of the company, and such contract may in the same manner be varied or discharged:
- (3.) Any contract which if made between private persons would by law be valid although made by parol only, and not

§§ 34, 35, 36. The words "at the discretion of the court"; in §§ 34 & 35, the words after "penal servitude for life"; and in § 36, the words after "fourteen years,"—all repealed, Statute Law Revision Act (2), 1898.

reduced into writing, may be made by parol on behalf of the company by any person acting under the express or implied authority of the company, and such contract may in the same way be varied or discharged:

And all contracts made according to the provisions herein contained shall be effectual in law, and shall be binding upon the company and their successors and all other parties thereto, their heirs, executors, or administrators, as the case may be.

XXXVIII. Prospectus, &c. to specify dates and names of parties to any contract made prior to issue of such prospectus, &c.—Every prospectus of a company, and every notice inviting persons to subscribe for shares in any joint stock company, shall specify the dates and the names of the parties to any contract entered into by the company, or the promoters, directors, or trustees thereof, before the issue of such prospectus or notice, whether subject to adoption by the directors or the company, or otherwise; and any prospectus or notice not specifying the same shall be deemed fraudulent on the part of the promoters, directors, and officers of the company knowingly issuing the same, as regards any person taking shares in the company on the faith of such prospectus, unless he shall have had notice of such contract.

Meetings.

XXXIX. Company to hold meeting within four months after registration.—Every company formed under the principal Act after the commencement of this Act shall hold a general meeting within four months after its memorandum of association is registered; and if such meeting is not held the company shall be liable to a penalty not exceeding five pounds a day for every day after the expiration of such four months until the meeting is held; and every director or manager of the company, and every subscriber of the memorandum of association, who knowingly authorises or permits such default, shall be liable to the same penalty.

Winding up.

XL. Contributory when not qualified to present winding up petition.—No contributory of a company under the principal Act shall be capable of presenting a petition for winding up such company unless the members of the company are reduced in number to less than seven, or unless the shares in respect of which he is a contributory, or some of them, either were originally allotted to him or have been held by him, and registered in his name, for a period of at least six months during the eighteen months previously to the commencement of the winding up, or have devolved upon him through the death of a former holder:

Provided that where a share has during the whole or any part of the six months been held by or registered in the name of the wife of a contributory either before or after her marriage, or by or in the name of any trustee or trustees for such wife or for the contributory, such shares shall for the purposes of this section be deemed to have been held by and registered in the name of the contributory.

XLI. Winding up may be referred to county court.—Where the High Court of Chancery in England makes an order for winding up a company under the principal Act, it may, if it thinks fit, direct all subsequent proceedings to be had in a county court held under an Act of the session of the ninth and tenth years of the reign of Her present Majesty, chapter ninety-five, and the Acts amending the same; and thereupon such county court shall, for the purpose of winding up the company, be deemed to be "the court" within the meaning of the principal Act, and shall have, for the purposes of such winding up, all the jurisdiction and powers of the High Court of Chancery.

XLII. As to transfer of suit from one county court to another.—If during the progress of a winding up it is made to appear to the High Court of Chancery that the same could be more conveniently prosecuted in any other county court, it shall be competent for the High Court of Chancery to transfer the same to such other county court, and thereupon the winding up shall proceed in such other county court.

XLIII. Parties aggrieved may appeal.—If any party in a winding up under this Act is dissatisfied with the termination or direction of a Judge of a county court on any matter in such winding up, such party may appeal from the same to the Vice-Chancellor named for that purpose by the Lord Chancellor by general order: Provided that such party shall, within thirty days after such determination or direction, give notice of such appeal to the other party or his attorney, and also deposit with the registrar of the county court the sum of ten pounds as security for the costs of the appeal; and the said court of appeal may make such final or other decree or order as it thinks fit, and may also make such order with respect to the costs of the said appeal as such court may think proper, and such orders shall be final.

XLIV. Powers to frame rules and orders under section 32 of 19 and 20 Vict., c. 108.—The county court judges appointed or to be appointed by the Lord Chancellor from time to time to frame rules and orders for regulating the practice of the courts, and forms of proceedings therein, under the thirty-second section of an Act passed in the nineteenth and twentieth years of the reign of Her present Majesty, chapter one hundred and eight, shall frame the rules and orders for regulating the practice of the county courts under this Act, and forms of proceedings therein, and from time to time may amend such rules, orders, and forms; and such rules, orders, and forms, or amended rules, orders, and forms, certified under the hands of such judges or of any three or more of them, shall be submitted to the Lord Chancellor, who may allow or disallow or alter the same, and so from time to time; and the rules, orders, and forms, or amended rules, orders, and forms, so allowed or altered, shall from a day to be named by the Lord Chancellor be in force in every county court.

XLV. Scale of cost to be framed by the judges.—The county court judges mentioned in the last section shall be empowered to frame a scale of

Repealed 1901.

Repealed as to England, 1890.

Repealed as to England, 1890.

costs and charges to be paid to counsel and attorneys with respect to all proceedings in a winding up under this Act, and from time to time to amend such scale; and such scale or amended scale, certified under the hands of such judges or any three or more of them, shall be submitted to the Lord Chancellor, who from time to time may allow or disallow or alter the same; and the scale or amended scale so allowed or altered shall, from a day to be named by the Lord Chancellor, be in force in every county court.

XLVI. Remuneration of registrars and high bailiffs in winding up of companies.—The registrars and high bailiffs of the county courts shall be remunerated for the duties to be performed by them under this Act, by receiving, for their own use, such fees as may be from time to time authorised to be taken by any orders to be made by the Commissioners of the Treasury, with the consent of the Lord Chancellor; and the Commissioners of the Treasury are hereby authorised

and empowered, with such consent as aforesaid, from time to time to make such orders: Provided that it shall be lawful for the said Commissioners, with the like consent as aforesaid, by an order to direct that after the date named in the order any registrar or high bailiff shall, in lieu of receiving such fees, be paid such fixed or fluctuating allowance as may in each case be thought just, and after such date the said fees shall be accounted for and paid over by such registrar or high bailiff in such manner as may be directed in the order.

Saving.

XLVII. Not to exempt companies from provisions of section 196 of 25 and 26 Vict., c. 89.—Nothing in this Act contained shall exempt any company from the second or third provisions of the one hundred and ninety-sixth section of the principal Act restraining the alteration of any provision in any Act of Parliament or charter.

Repealed as to England, 1890.

ACT OF PARLIAMENT

TO

Facilitate Compromises and Arrangements between Creditors and Shareholders of Joint Stock and other Companies in Liquidation.—[33 and 34 Vict., cap. 104.
—10th August 1870.]

Repealed 1893.

Whereas it is expedient to amend the law relating to the liquidation of joint stock and other companies:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

I. Short title.—This Act may be cited as "The Joint Stock Companies Arrangement Act, 1870."

*** II. Where compromise proposed Court of Chancery may order a meeting of creditors, &c. to decide as to such compromise.**—Where any compromise or arrangement shall be proposed between a company which is, at the time of the passing of this Act or afterwards, in the course of being wound up, either voluntarily or by or under the supervision of the court under the Companies' Acts 1862 and 1867, or either of them, and the creditors of such company, or any

class of such creditors, it shall be lawful for the court, in addition to any other of its powers, on the application in a summary way of any creditor or the liquidator, to order that a meeting of such creditors or class of creditors shall be summoned in such manner as the court shall direct, and if a majority in number representing three-fourths in value of such creditors or class of creditors present either in person or by proxy at such meeting shall agree to any arrangement or compromise, such arrangement or compromise shall, if sanctioned by an order of the court, be binding on all such creditors or class of creditors, as the case may be, and also on the liquidator and contributories of the said company.

III. Interpretation.—The word "company" in this Act shall mean any company liable to be wound up under "The Companies Act, 1862."

IV. Act and Companies Act to be read together.—This Act shall be read and construed as part of "The Companies Act, 1862."

§ 2. The words "at the time of the passing of this Act or afterwards" repealed 1893.

* See also 63 and 64 Vict., c. 48, § 24.

ACT OF PARLIAMENT

TO

Amend the Companies Acts, 1862 and 1867.—[40 and 41 Vict., cap. 26.—
23d July 1877.]

Whereas doubts have been entertained whether the power given by the Companies Act, 1867 (30 and 31 Vict., c. 131), to a company of reducing its capital extends to paid-up capital, and it is expedient to remove such doubts:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this Parliament assembled, and by the authority of the same, as follows:

I. Short title.—This Act may be cited for all purposes as the Companies Act, 1877.

II. Construction of Act.—This Act shall, so far as is consistent with the tenor thereof, be construed as one with the Companies Acts, 1862 and 1867 (25 and 26 Vict., c. 89; 30 and 31 Vict., c. 131), and the said Acts and this Act may be referred to as "The Companies Act, 1862, 1867, and 1877."

III. Construction of "capital" and powers to reduce capital contained in 30 and 31 Vict., c. 131.—The word "capital" as used in the Companies Act, 1867, shall include paid-up capital: and the power to reduce capital conferred by that Act shall include a power to cancel any lost capital, or any capital unrepresented by available assets, or to pay off any capital which may be in excess of the wants of the company; and paid-up capital may be reduced either with or without extinguishing or reducing the liability (if any) remaining on the shares of the company, and to the extent to which such liability is not extinguished or reduced it shall be deemed to be preserved, notwithstanding anything contained in the Companies Act, 1867.

IV. Application of provisions of 30 and 31 Vict., c. 131.—The provisions of the Companies Act, 1867, as amended by this Act, shall apply to any company reducing its capital in pursuance of this Act and of the Companies Act, 1867, as amended by this Act:

Provided that where the reduction of the capital of a company does not involve either the diminution of any liability in respect of unpaid capital or the payment to any shareholder of any paid-up capital—

- (1.) The creditors of the company shall not, unless the court otherwise direct, be entitled to object, or required to consent to the reduction; and
- (2.) It shall not be necessary before the presentation of the petition for confirming the reduction to aid, and the court may, if it thinks it expedient so to do, dispense altogether with the addition of the words "and reduced," as mentioned in the Companies Act, 1867 (30 and 31 Vict., c. 131).

In any case that the court thinks fit so to do,

it may require the company to publish in such manner as it thinks fit the reasons for the reduction of its capital or such other information in regard to the reduction of its capital as the court may think expedient with a view to give proper information to the public in relation to the reduction of its capital by a company, and, if the court thinks fit, the causes which led to such reduction.

The minute required to be registered in the case of reduction of capital shall show, in addition to the other particulars required by law, the amount (if any) at the date of the registration of the minute proposed to be deemed to have been paid up on each share.

V. Power to reduce capital by the cancellation of unissued shares.—Any company limited by shares may so far modify the conditions contained in its memorandum of association, if authorised so to do by its regulations as originally framed or as altered by special resolution, as to reduce its capital by cancelling any shares which, at the date of the passing of such resolution, have not been taken or agreed to be taken by any person; and the provisions of "The Companies Act, 1867," shall not apply to any reduction of capital made in pursuance of this section.

VI. Reception of certified copies of documents as legal evidence.—And whereas it is expedient to make provision for the reception as legal evidence of certificates of incorporation other than the original certificates, and of certified copies of or extracts from any documents filed and registered under the Companies Acts, 1862 to 1877 (25 and 26 Vict., c. 89; 30 and 31 Vict., c. 131; 40 and 41 Vict., c. 36): Be it enacted, that any certificate of the incorporation of any company given by the registrar or by any assistant registrar for the time being shall be received in evidence as if it were the original certificate, and any copy of or extract from any of the documents or part of the documents kept and registered at any of the offices for the registration of joint stock companies in England, Scotland, or Ireland, if duly certified to be a true copy under the hand of the registrar or one of the assistant registrars for the time being, and whom it shall not be necessary to prove to be the registrar or assistant registrar, shall, in all legal proceedings, civil or criminal, and in all cases whatsoever, be received in evidence as of equal validity with the original document.

Repealed 1894.

ACT OF PARLIAMENT

TO

Amend the Law with respect to the Liability of Members of Banking and other Joint Stock Companies; and for other purposes.—[42 and 43 Vict., cap. 76.—15th August 1879.]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

I. Short title.—This Act may be cited as the Companies Act, 1879.

II. Act not to apply to Bank of England.—This Act shall not apply to the Bank of England.

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1891.

III. *Act to be construed with 25 and 26 Vict., cap. 89, 30 and 31 Vict., cap. 131, and 40 and 41 Vict., cap. 26.*—This Act shall, so far as is consistent with the tenor thereof, be construed as one with the Companies Acts, 1862, 1867, and 1877, and those Acts together with this Act may be referred to as the Companies Acts, 1862 to 1879.

IV. *Registration anew of company.*—Subject as in this Act mentioned, any company registered before or after the passing of this Act as an unlimited company may register under the Companies Acts, 1862 to 1879, as a limited company, or any company already registered as a limited company may re-register under the provisions of this Act.

The registration of an unlimited company as a limited company in pursuance of this Act shall not affect or prejudice any debts, liabilities, obligations, or contracts incurred or entered into by, to, with, or on behalf of such company prior to registration, and such debts, liabilities, contracts, and obligations may be enforced in manner provided by Part VII. of the Companies Act, 1862, in the case of a company registering in pursuance of that Part.

V. *Reserve capital of company, how provided.*—An unlimited company may, by the resolution passed by the members when assenting to registration as a limited company under the Companies Acts, 1862 to 1879, and for the purpose of such registration or otherwise, increase the nominal amount of its capital by increasing the nominal amount of each of its shares.

Provided always, that no part of such increased capital shall be capable of being called up, except in the event of and for the purposes of the company being wound up.

And, in cases where no such increase of nominal capital may be resolved upon, an unlimited company may, by such resolution as aforesaid, provide that a portion of its uncalled capital shall not be capable of being called up, except in the event of and for the purposes of the company being wound up.

A limited company may by a special resolution declare that any portion of its capital which has not been already called up shall not be capable of being called up, except in the event of and for the purposes of the company being wound up; and thereupon such portion of capital shall not be capable of being called up, except in the event of and for the purposes of the company being wound up.

VI. *25 and 26 Vict., cap. 89, § 182, repealed, and liability of bank of issue unlimited in respect of notes.*—Section one hundred and eighty-two of the Companies Act, 1862, is hereby repealed, and in place thereof it is enacted as follows:—A bank of issue registered as a limited company, either before or after the passing of this Act, shall not be entitled to limited liability in respect of its notes; and the members thereof shall continue liable in respect of its notes in the same manner as if it had been registered as an unlimited company; but in case the general assets of the company are, in the event of the company being wound up, insufficient to satisfy

the claims of both the note-holders and the general creditors, then the members, after satisfying the remaining demands of the note-holders, shall be liable to contribute towards payment of the debts of the general creditors a sum equal to the amount received by the note-holders out of the general assets of the company.

For the purposes of this section the expression "the general assets of the company" means the funds available for payment of the general creditor as well as the note-holder.

It shall be lawful for any bank of issue registered as a limited company to make a statement on its notes to the effect that the limited liability does not extend to its notes, and that the members of the company continue liable in respect of its notes in the same manner as if it had been registered as an unlimited company.

VII. *Audit of accounts of banking companies.*—

(1.) Once at the least in every year the accounts of every banking company registered after the passing of this Act as a limited company shall be examined by an auditor or auditors, who shall be elected annually by the company in general meeting.

(2.) A director or officer of the company shall not be capable of being elected auditor of such company.

(3.) An auditor on quitting office shall be re-eligible.

(4.) If any casual vacancy occurs in the office of any auditor the surviving auditor or auditors (if any) may act, but if there is no surviving auditor, the directors shall forthwith call an extraordinary general meeting for the purpose of supplying the vacancy or vacancies in the auditorship.

(5.) Every auditor shall have a list delivered to him of all books kept by the company, and shall at all reasonable times have access to the books and accounts of the company; and any auditor may, in relation to such books and accounts, examine the directors or any other officer of the company: Provided that if a banking company has branch banks beyond the limits of Europe, it shall be sufficient if the auditor is allowed access to such copies of and extracts from the books and accounts of any such branch as may have been transmitted to the head office of the banking company in the United Kingdom.

(6.) The auditor or auditors shall make a report to the members on the accounts examined by him or them, and on every balance-sheet laid before the company in general meeting during his or their tenure of office; and in every such report shall state whether, in his or their opinion, the balance-sheet referred to in the report is a full and fair balance-sheet properly drawn up, so as to exhibit a true and correct view of the state of the company's affairs, as shown by the books of the company; and such report shall be read before the company in general meeting.

(7.) The remuneration of the auditor or auditors shall be fixed by the general meeting appointing such auditor or auditors, and shall be paid by the company.

VIII. *Signature of balance-sheet.*—Every balance-sheet submitted to the annual or other

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meeting of the members of every banking company registered after the passing of this Act as a limited company shall be signed by the auditor or auditors, and by the secretary or manager (if any), and by the directors of the company, or three of such directors at the least.

IX. Application of 25 and 26 Vict., cap. 89, 80 and 81 Vict., cap. 181, and 40 and 41 Vict., cap. 26.—On the registration, in pursuance of this Act, of a company which has been already registered, the registrar shall make provision for closing the former registration of the company, and may dispense with the delivery to him of copies of any documents with copies of which he was furnished on the occasion of the original registration of the company; but, save as aforesaid, the registration of such a company shall take place in the same manner and have the

same effect as if it were the first registration of that company under the Companies Acts, 1862 to 1879, and as if the provisions of the Acts under which the company was previously registered and regulated had been contained in different Acts of Parliament from those under which the company is registered as a limited company.

X. Privileges of Act available notwithstanding constitution of company.—A company authorised to register under this Act may register thereunder and avail itself of the privileges conferred by this Act, notwithstanding any provisions contained in any Act of Parliament, royal charter, deed of settlement contract of copartnership, cost book, regulations, letters patent, or other instrument constituting or regulating the company.

ACT OF PARLIAMENT

TO

Amend the Companies Acts of 1862, 1867, 1877, and 1879.—[43 Vict., cap. 16.—
24th March 1880.]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

I. Short title.—This Act may be cited for all purposes as the Companies Act, 1880.

II. Construction of Acts.—This Act shall, so far as is consistent with the tenor thereof, be construed as one with the Companies Acts, 1862, 1867, 1877, and 1879 [25 and 26 Vict., c. 89, 80 and 81 Vict., c. 181, 40 and 41 Vict., c. 26, 42 and 43 Vict., c. 76], and the said Acts and this Act may be referred to as the Companies Acts, 1862 to 1880.

III. Accumulated profits may be returned to shareholders in reduction of paid-up capital.—When any company has accumulated a sum of undivided profits, which with the consent of the shareholders may be distributed among the shareholders in the form of a dividend or bonus, it shall be lawful for the company, by special resolution, to return the same, or any part thereof, to the shareholders in reduction of the paid-up capital of the company, the unpaid capital being thereby increased by a similar amount. The powers vested in the directors of making calls upon the shareholders in respect of moneys unpaid upon their shares shall extend to the amount of the unpaid capital as augmented by such reduction.

IV. No resolution to take effect till particulars have been registered.—No such special resolution as aforesaid shall take effect until a memorandum, shewing the particulars required by law in the case of a reduction of capital by order of the court, shall have been produced to and registered by the Registrar of Joint Stock Companies.

V. Power to any shareholder within one month after passing of resolution to require company to retain moneys paid upon shares held by such person.—Upon any reduction of paid-up capital made in pursuance of this Act, it shall be lawful for any shareholder, or for any one or more of several joint shareholders, within one month after the passing of the special resolution for such reduction, to require the company to retain, and the company shall retain accordingly, the whole of the moneys actually paid upon the shares held by such person, either alone or jointly with any other person or persons, and which, in consequence of such reduction, would otherwise be returned to him or them, and thereupon the shares in respect of which the said moneys shall be so retained shall, in regard to the payment of dividends thereon, be deemed to be paid up to the same extent only as the shares on which payment as aforesaid has been accepted by the shareholders in reduction of their paid-up capital, and the company shall invest and keep invested the moneys so retained in such securities authorised for investment by trustees as the company shall determine, and

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1880.

upon the money so invested, or upon so much thereof as from time to time exceeds the amount of calls subsequently made upon the shares in respect of which such moneys shall have been retained, the company shall pay such interest as shall be received by them from time to time on such securities, and the amount so retained and invested shall be held to represent the future calls which may be made to replace the capital so reduced on those shares, whether the amount obtained on sale of the whole or such proportion thereof as represents the amount of any call when made, produces more or less than the amount of such call.

V1. Company to specify amounts which shareholders have required them to retain under section 4; also to specify amounts of profits returned to shareholders.—From and after such reduction of capital the company shall specify in the annual lists of members, to be made by them in pursuance of the twenty-sixth section of the Companies Act, 1862 [25 and 26 Vict., c. 89], the amounts which any of the shareholders of the company shall have required the company to retain, and the company shall have retained accordingly, in pursuance of the fifth section of this Act, and the company shall also specify in the statements of account laid before any general meeting of the company the amount of the undivided profits of the company which shall have been returned to the shareholders in reduction of the paid-up capital of the company under this Act.

** VII. Power of Registrar to strike names of defunct companies off register.*—(1.) Where the Registrar of Joint Stock Companies has reasonable cause to believe that a company, whether registered before or after the passing of this Act, is not carrying on business or in operation, he shall send to the company by post a letter inquiring whether the company is carrying on business or in operation.

(2.) If the registrar does not within one month of sending the letter receive any answer thereto, he shall within fourteen days after the expiration of the month send to the company by post a registered letter referring to the first letter, and stating that no answer thereto has been received by the registrar, and that if an answer is not received to the second letter within one month from the date thereof, a notice will be published in the Gazette with a view to striking the name of the company off the register.

(3.) If the Registrar either receives an answer from the company to the effect that it is not carrying on business or in operation, or does not within one month after sending the second letter receive any answer thereto, the registrar may publish in the Gazette and send to the company a notice that at the expiration of three months

from the date of that notice the name of the company mentioned therein will, unless cause is shown to the contrary, be struck off the register and the company will be dissolved.

(4.) At the expiration of the time mentioned in the notice the registrar may, unless cause to the contrary is previously shown by such company, strike the name of such company off the register, and shall publish notice thereof in the Gazette, and on the publication in the Gazette of such last-mentioned notice the company whose name is so struck off shall be dissolved: Provided that the liability (if any) of every director, managing officer, and member of the company shall continue and may be enforced as if the company had not been dissolved.

(5.) If any company or member thereof feels aggrieved by the name of such company having been struck off the register in pursuance of this section, the company or member may apply to the superior court in which the company is liable to be wound up; and such court, if satisfied that the company was at the time of the striking off carrying on business or in operation, and that it is just so to do, may order the name of the company to be restored to the register, and thereupon the company shall be deemed to have continued in existence as if the name thereof had never been struck off; and the court may by the order give such directions and make such provisions as seem just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had never been struck off.

(6.) A letter or notice authorised or required for the purposes of this section to be sent to a company may be sent by post addressed to the company at its registered office, or, if no office has been registered, addressed to the care of some director or officer of the company, or if there be no director or officer of the company whose name and address are known to the registrar, the letter or notice (in identical form) may be sent to each of the persons who subscribed the memorandum of association, addressed to him at the address mentioned in that memorandum.

(7.) In the execution of his duties under this section the Registrar shall conform to any regulations which may be from time to time made by the Board of Trade.

(8.) In this section the Gazette means, as respects companies whose registered office is in England, the London Gazette; as respects companies whose registered office is in Scotland, the Edinburgh Gazette; and as respects companies whose registered office is in Ireland, the Dublin Gazette.

* See 63 and 64 Vict., c. 48, § 26.

ACT OF PARLIAMENT

TO

Enable Joint Stock Companies carrying on Business in Foreign Countries to have Official Seals to be used in such Countries.—[26 and 27 Vict., cap. 19.—13th May 1864.]

Repealed 1878.

Whereas there have been and may be established in the United Kingdom companies whose business is to be carried on in countries not situate in the United Kingdom, and it is convenient and desirable that investments may be made, and mortgages, conveyances, and leases taken, and contracts and engagements entered into, on behalf of the company, in such countries, in the name of the company: Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

I. Short title.—This Act may be cited for all purposes as *The Companies Seals Act, 1864*.

II. Power to companies to have an official seal.—Any company, under *The Companies Act, 1862*, whose objects require or comprise the transaction of business, as herein-before mentioned, in foreign countries, may cause to be prepared an official seal for and to be used in any place, district, or territory situate out of the United Kingdom, in which the business of the company shall be carried on, and every such official seal may and shall be a fac-simile of or as nearly as practicable a fac-simile of the common seal of the company, with the exception that on the face thereof shall be inscribed the name of each and every place, district, or territory in and for which it is to be used: Provided that it shall be lawful for any such company as aforesaid from time to time to break up and renew any official seal or seals, and to vary the limits within which it is intended to be used.

III. Power to companies to appoint agents abroad to affix seals.—Every company having or using any such official seal as is authorised by this Act may from time to time, by any instrument or instruments in writing under the common seal of the company, empower any agent or agents specially appointed for the purpose, or any local agent, board, committee, manager, or commissioner, appointed under the provisions of the articles of association of such company, in any place, district, or territory situate out of the United Kingdom where the business of the company shall for the time being be carried on, to affix such official seal to any deed, contract, or other instrument to which the company is or shall be made a party in such place, district, or territory, and no

other order of the company or the board of directors thereof shall be necessary to authorise any such seal to be affixed to any deed, contract, or other instrument.

IV. As to the duration of powers granted under sec. 3 of this Act.—Every power granted under the last preceding section shall, as between the company, their successors and assigns, on the one hand, and the person or persons dealing with the agent or agents, board, committee, manager, or commissioner named in the instrument conferring the power, and all parties claiming through or under such person or persons, on the other hand, continue in force during the period, if any, mentioned in the instrument conferring the power, or if no power be there mentioned then until notice of the revocation or determination of the power shall have been given to such person or persons as aforesaid.

V. Person affixing seal to document to certify the date when so affixed.—Whenever any such official seal as aforesaid shall be affixed to any document, the person affixing the same shall, by writing under his hand, and written on the document to which the seal may have been affixed, certify the date when and the place where the same was affixed; and any document to which any such seal shall have been duly affixed within the district or territory or place the name whereof is inscribed on such seal shall bind the company in the same way and to the same extent and have the same force and effect as if it had been duly sealed with the common seal of the company.

VI. Companies not to exercise powers of Act unless authorised.—The powers given by this Act shall be exercised by such companies only as are or shall be expressly authorised to exercise the same by their articles of association, or a special resolution passed according to the provisions of *The Companies Act, 1862*, and shall be exercised by such companies subject to any directions or restrictions in their articles of association or the special resolutions contained.

VII. Section 55 of 25 & 26 Vict., cap. 89, not repealed.—Nothing in this Act contained shall operate to repeal the provisions of the fifty-fifth section of *The Companies Act, 1862*, but such section shall continue in force, and all acts done or to be done thereunder shall be as valid and effectual as if this Act had not been passed.

The Companies (Colonial Registers) Act.—[46 and 47 Vict., cap. 80.—
20th August 1883.]

Repealed 1898.

Whereas many companies registered under the Companies Act, 1862, carry on business in British colonies, and dealings in their shares are frequent in such colonies, but delay, inconvenience, and expense are occasioned by reason of the absence of any legal provision for keeping local registers of members, and it is expedient that such provisions as this Act contains be made in that behalf:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

I. *Short title and construction.*—This Act may be cited for all purposes as the Companies (Colonial Registers) Act, 1883; and this Act shall, so far as is consistent with the tenor thereof, be construed as one with the Companies Acts, 1862 to 1880, and the said Acts and this Act may be referred to as the Companies Acts, 1862 to 1883.

II. *Definitions.*—In this Act the term "company" means a company registered under the Companies Act, 1862, and having a capital divided into shares; the term "shares" includes stock; the term "colony" does not include any place within the United Kingdom, the Isle of Man, or the Channel Islands, but includes such territories as may for the time being be vested in Her Majesty by virtue of an Act of Parliament for the government of India, and any plantation, territory, or settlement situate elsewhere within Her Majesty's dominions.

III. *Power for companies to keep colonial registers.*—(1.) Any company whose objects comprise the transaction of business in a colony may, if authorised so to do by its regulations, as originally framed or as altered by special resolution, cause to be kept in any colony in which it transacts business a branch register or registers of members resident in such colony.

(2.) The company shall give to the registrar of joint stock companies notice of the situation of the office where any such branch register (in this Act called a colonial register) is kept, and of any change therein, and of the discontinuance of any such office in the event of the same being discontinued.

(3.) A colonial register shall, as regards the particulars entered therein, be deemed to be a part of the company's register of members, and shall be *prima facie* evidence of all particulars entered therein. Any such register shall be kept in the manner provided by the Companies Acts, 1862 to 1880, with this qualification, that the advertisement mentioned in section thirty-three of the Companies Act, 1862, shall be inserted in some newspaper circulating in the district wherein the register to be closed is kept, and that any competent court in the colony where such register is kept shall be entitled to exercise the same jurisdiction of rectifying the same as is by section thirty-five

of the Companies Act, 1862, vested, as respects a register, in England and Ireland in Her Majesty's superior courts of law or equity, and that all offences under section thirty-two of the Companies Act, 1862 (25 and 26 Vict., c. 89), may, as regards a colonial register, be prosecuted summarily before any tribunal in the colony where such register is kept having summary criminal jurisdiction.

(4.) The company shall transmit to its registered office a copy of every entry in its colonial register or registers as soon as may be after such entry is made, and the company shall cause to be kept at its registered office, duly entered up from time to time, a duplicate or duplicates of its colonial register or registers. The provisions of section thirty-two of the Companies Act, 1862, shall apply to every such duplicate, and every such duplicate shall, for all the purposes of the Companies Acts, 1862 to 1880, be deemed to be part of the register of members of the company.

(5.) Subject to the provisions of this Act with respect to the duplicate register, the shares registered in a colonial register shall be distinguished from the shares registered in the principal register, and no transaction with respect to any shares registered in a colonial register shall, during the continuance of the registration of such shares in such colonial register, be registered in any other register.

(6.) The company may discontinue to keep any colonial register, and thereupon all entries in that register shall be transferred to some other colonial register kept by the company in the same colony, or to the register of members kept at the registered office of the company.

(7.) In relation to stamp duties the following provisions shall have effect:—

(a.) An instrument of transfer of a share registered in a colonial register under this Act shall be deemed to be a transfer of property situated out of the United Kingdom, and unless executed in any part of the United Kingdom shall be exempt from British stamp duty.

(b.) Upon the death of a member registered in a colonial register under this Act, the share or other interest of the deceased member shall for the purposes of this Act so far as relates to British duties be deemed to be part of his estate and effects situated in the United Kingdom for or in respect of which probate or letters of administration is or are to be granted, or whereof an inventory is to be exhibited and recorded in like manner as if he were registered in the register of members kept at the registered office of the company.*

(8.) Subject to the provisions of this Act, any company may, by its regulations as originally framed, or as altered by special resolution, make such provisions as it may think fit respecting the keeping of colonial registers.

* Amended by 52 and 53 Vict. c. 42, § 18, which enacts that the share of a deceased member registered in a Colonial register, who shall have died domiciled elsewhere than in the United Kingdom, shall not be deemed to be part of his estate in the United Kingdom, for or in respect of which probate is to be granted, or an inventory exhibited.

ACT OF PARLIAMENT

TO

Amend the Companies Acts of 1862, 1867, 1870, 1877, 1879, 1880, and 1883.—
[49 Vict., cap. 23.—4th June 1886.]

Repeated 1898.

Whereas it has become expedient to amend the provisions of the Companies Act, 1862 (25 and 26 Vict., c. 89), and of the other Acts amending the same herein-after recited, in so far as the said provisions relate to the liquidation of companies in Scotland:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

I. *Short title.*—This Act may be cited for all purposes as the Companies Act, 1886.

II. *Construction of Acts.*—This Act shall, so far as consistent with the tenor thereof, be construed as one with the Companies Act, 1862, 1867, 1877, 1879, 1880, and 1883 (25 and 26 Vict., c. 89; 30 and 31 Vict., c. 131; 40 and 41 Vict., c. 26; 42 and 43 Vict., c. 76; 43 Vict., c. 19; 46 and 47 Vict., c. 28), and the Joint Stock Companies Arrangement Act, 1870 (33 and 34 Vict., c. 104), and the said Acts and this Act may be referred to as the Companies Act, 1862 to 1886.

III. *Effect of diligence within sixty days of winding up by or subject to supervision of Court.*—In the winding up, by or subject to the supervision of the Court, of any company under the Companies Act, 1862 to 1886, whose registered office is in Scotland, where the winding up shall commence after the passing of this Act, the following provisions shall have effect:

- (1.) Such winding up shall, in the case of a winding up by the Court as at the commencement thereof, and in the case of a winding up subject to the supervision of the Court as at the date of the presentation of the petition, on which a supervision order is afterwards pronounced, be equivalent to an arrestment in execution and decree of forthcoming, and to an executed or completed poinding; and no arrestment or poinding of the funds or effects of the company, executed on or after the sixtieth day prior to the commencement of the winding up by the Court, or to the presentation of the petition on which a supervision order is made, as the case may be, shall be effectual; and such funds or effects, or the proceeds of such effects, if sold, shall be made forthcoming to the liquidator: Provided that any arrestment or poinding, before the date of such winding up, or of such petition, as the case may be, who shall be thus deprived of the benefit of his diligence, shall have preference out of such funds or effects for the

expense *bona fide* incurred by him in such diligence.

- (2.) Such winding up shall, as at the respective dates aforesaid, be equivalent to a decree of adjudication of the heritable estates of the company for payment of the whole debts of the company, principal and interest, accumulated at the said dates respectively, subject always to such preferable heritable rights and securities as existed at the said dates and are valid and unchallengeable, and the right to poind the ground herein-after provided.
- (3.) The provisions of sections one hundred and twelve to one hundred and seventeen inclusive, and also of section one hundred and twenty, of the Bankruptcy (Scotland) Act, 1856 (19 and 20 Vict., c. 79), shall, so far as consistent with the tenor of the recited Acts, apply to the realisation of heritable estates affected by such heritable rights and securities as aforesaid; and for the purposes of this Act the words "sequestration" and "trustee" occurring in said sections of the Bankruptcy (Scotland) Act, 1856, shall mean respectively "liquidation" and "liquidator"; and the expression "the Lord Ordinary or the Court" shall mean "the Court" as defined by this Act.
- (4.) No poinding of the ground which has not been carried into execution by sale of the effects sixty days before the respective dates aforesaid shall, except to the extent herein-after provided, be available in any question with the liquidator: Provided that no creditor who holds a security over the heritable estate preferable to the right of the liquidator shall be prevented from executing a poinding of the ground after the respective dates aforesaid, but such poinding shall in competition with the liquidator be available only for the interest on the debt for the current half-yearly term, and for the arrears of interest for one year immediately before the commencement of such term.

IV. *Ranking of claims.*—In the winding up of any company under the Companies Act, 1862 to 1886, whose registered office is in Scotland, and where the winding up shall commence after the passing of this Act, the general and special rules in regard to voting and ranking for payment of dividends, provided by the Bankruptcy (Scotland) Act, 1856, sections forty-nine to sixty-six inclusive, or any other rules in regard thereto which may be in force for the time being in the sequestration of the estates of bankrupts in Scotland, shall, so far as consistent with the

tenor of the said recited Acts, apply to creditors of such companies voting in matters relating to the winding up, and ranking for payment of dividends; and for this purpose sequestration shall be taken to mean liquidation, trustee to mean liquidator, and sheriff to mean the court.

V. *Jurisdiction of the Lord Ordinary on the Bills in vacation.*—Wherever the expression “the Court of Session” occurs in the said recited Acts, or the expression “the Court” occurring therein or in this Act refers to the Court of Session in Scotland, it shall mean and include either division thereof, or, in the event of a remit to a permanent Lord Ordinary, as herein-after provided, such Lord Ordinary during session, and in time of vacation the Lord Ordinary on the Bills; and in regard to orders or judgments pronounced by the said Lord Ordinary on the Bills in vacation, the following provisions shall have effect:—

- (1.) No order or judgment pronounced by the said Lord Ordinary in vacation, under or by virtue, in whole or in part, of the following sections of the said recited Acts, shall be subject to review, reduction, suspension, or stay of execution, videlicet, of the Companies Act, 1862 (25 and 26 Vict. c. 89), sections ninety-one, one hundred and seven, one hundred and fifteen, one hundred and seventeen, and one hundred and twenty-seven, and section one hundred and forty-nine so far as it authorises the Court to direct meetings of creditors or contributories to be held, and that portion of section two of the Joint Stock Companies Arrangement Act, 1870 (33 and 34 Vict., c. 104), which authorises the Court to order that a meeting of creditors or class of creditors shall be summoned; and also sections one hundred and twenty-two and one hundred and twenty-three of the Companies Act, 1862, so far as they may affect the sections above enumerated.

- (2.) All other orders or judgments pronounced by the said Lord Ordinary in vacation (except as after mentioned) shall be subject to review only by reclaiming note, in common form, presented (notwithstanding the terms of section one hundred and twenty-four of the Companies Act, 1862) within fourteen days from the date of such order or judgment: Provided always, that such orders or judgments pronounced by the said Lord Ordinary in vacation, under or by virtue, in whole or in part, of the following sections of the Companies Act, 1862, shall, from the dates of such orders or judgments, and notwithstanding any reclaiming note against the same, be

carried out and receive effect till such reclaiming note be disposed of by the court, videlicet, sections eighty-five, eighty-seven, eighty-nine, ninety-three (except in regard to the removal or remuneration of liquidators), ninety-five, ninety-six (except in regard to the power to sell), one hundred, one hundred and eighteen, first part of one hundred and forty-one, one hundred and forty-seven, one hundred and fifty (except in regard to the removal of liquidators and the filling up of vacancies caused by such removal), one hundred and ninety-seven, one hundred and ninety-eight, and two hundred and one; and also sections one hundred and twenty-two and one hundred and twenty-three of the Companies Act, 1862, so far as they may affect the sections above enumerated.

Provided that nothing in this section contained shall in any way affect the provisions of section one hundred and twenty-one of the Companies Act, 1862, in reference to decrees for payment of calls in the winding up of companies, whether voluntarily or by or subject to the supervision of the Court.

VI. *Winding up may be remitted to Lord Ordinary.*—When the Court makes a winding up or a supervision order, or at any time thereafter, it shall be lawful for the Court, in either division thereof, if it thinks fit, to direct all subsequent proceedings in the winding up to be taken before one of the permanent Lords Ordinary, and to remit the winding up to him accordingly; and thereupon such Lord Ordinary shall, for the purposes of the winding up, be deemed to be “the Court,” within the meaning of the recited Acts and this Act, and shall have, for the purposes of such winding up, all the jurisdiction and powers of the Court of Session: Provided always, that all orders or judgments pronounced by such Lord Ordinary shall be subject to review only by reclaiming note in common form, presented (notwithstanding the terms of section one hundred and twenty-four of the Companies Act, 1862) within fourteen days from the date of such order or judgment. But, should a reclaiming note not be presented and moved during session, the provisions of section five of this Act shall apply to such orders or judgments: Provided also, that the said Lord Ordinary may report to the division of the Court any matter which may arise in the course of the winding up. This section and the immediately preceding section shall come into force from the passing of this Act, and shall include companies then in the course of being wound up.

ACT OF PARLIAMENT

TO

Amend the Law relating to the Liability of Directors and others for Statements in Prospectuses and other Documents soliciting applications for Shares or Debentures.—53 and 54 Vict., cap. 64.—[18th August 1890.]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

I. *Short title.*—This Act may be cited as the Directors Liability Act, 1890.

II. *Construction.*—This Act shall be construed as one with the Companies Acts, 1862 to 1890.

III. *Liability for statements in prospectus.*—(1.) Where after the passing of this Act a prospectus or notice invites persons to subscribe for shares in or debentures or debenture stock of a company, every person who is a director of the company at the time of the issue of the prospectus or notice, and every person who having authorised such naming of him is named in the prospectus or notice as a director of the company or as having agreed to become a director of the company either immediately or after an interval of time, and every promoter of the company, and every person who has authorised the issue of the prospectus or notice, shall be liable to pay compensation to all persons who shall subscribe for any shares, debentures, or debenture stock on the faith of such prospectus or notice for the loss or damage they may have sustained by reason of any untrue statement in the prospectus or notice, or in any report or memorandum appearing on the face thereof, or by reference incorporated therein or issued therewith, unless it is proved—

- (a.) With respect to every such untrue statement not purporting to be made on the authority of an expert, or of a public official document or statement, that he had reasonable ground to believe, and did up to the time of the allotment of the shares, debentures, or debenture stock, as the case may be, believe that the statement was true; and
- (b.) With respect to every such untrue statement purporting to be a statement by

or contained in what purports to be a copy of or extract from a report or valuation of an engineer, valuer, accountant, or other expert, that it fairly represented the statement made by such engineer, valuer, accountant, or other expert, or was a correct and fair copy of or extract from the report or valuation. Provided always, that notwithstanding that such untrue statement fairly represented the statement made by such engineer, valuer, accountant, or other expert, or was a correct and fair copy of an extract from the report or valuation, such director, person named, promoter, or other person, who authorised the issue of the prospectus or notice as aforesaid, shall be liable to pay compensation as aforesaid if it be proved that he had no reasonable ground to believe that the person making the statement, report, or valuation was competent to make it; and

- (c.) With respect to every such untrue statement purporting to be a statement made by an official person or contained in what purports to be a copy of or extract from a public official document, that it was a correct and fair representation of such statement or copy of or extract from such document.

or unless it is proved that having consented to become a director of the company he withdrew his consent before the issue of the prospectus or notice, and that the prospectus or notice was issued without his authority or consent, or that the prospectus or notice was issued without his knowledge or consent, and that on becoming aware of its issue he forthwith gave reasonable public notice that it was so issued without his knowledge or consent, or that after the issue of such prospectus or notice and before allotment thereunder, he, on becoming aware of any untrue statement therein, withdrew his consent thereto, and caused reasonable public notice of such withdrawal, and of the reason therefor, to be given.

(2.) A promoter in this section means a promoter who was a party to the preparation of the prospectus or notice, or of the portion thereof containing such untrue statement, but shall not include any person by reason of his acting in a professional capacity for persons engaged in procuring the formation of the company.

(3.) Where any company existing at the passing of this Act, which has issued shares or debentures, shall be desirous of obtaining further capital by subscriptions for shares or debentures, and for that purpose shall issue a prospectus or notice, no director of such company shall be liable in respect of any statement therein, unless he shall have authorised the issue of such prospectus or notice, or have adopted or ratified the same.

(4.) In this section the word "expert" includes any person whose profession gives authority to a statement made by him.

IV. *Indemnity where name of person has been improperly inserted as a director.*—Where any such prospectus or notice as aforesaid contains the name of a person as a director of the company, or as having agreed to become a director thereof, and such person has not

consented to become a director, or has withdrawn his consent before the issue of such prospectus or notice, and has not authorised or consented to the issue thereof, the directors of the company, except any without whose knowledge or consent the prospectus or notice was issued, and any other person who authorised the issue of such prospectus or notice shall be liable to indemnify the person named as a director of the company, or as having agreed to become a director thereof as aforesaid, against all damages, costs, charges, and expenses to which he may be made liable by reason of his name having been inserted in the prospectus or notice, or in defending himself against any action or legal proceedings brought against him in respect thereof.

V. *Contribution from co-directors, &c.*—Every person who by reason of his being a director, or named as a director, or as having agreed to become a director or of his having authorised the issue of the prospectus or notice, has become liable to make any payment under the provisions of this Act, shall be entitled to recover contribution, as in cases of contract, from any other person who, if sued separately, would have been liable to make the same payment.

ACT OF PARLIAMENT

TO

Give further Powers to Companies with respect to certain Instruments under which they may be constituted or regulated.—53 and 54 Vict., cap. 62.—[18th August 1890].

I. Power for Company to alter objects or form of constitution subject to confirmation by court.—

(1.) Subject to the provisions of this Act, a company registered under the Companies Acts, 1862 to 1886, may, by special resolution, alter the provisions of its memorandum of association or deed of settlement with respect to the objects of the company, so far as may be required for any of the purposes hereinafter specified, or alter the form of its constitution by substituting a memorandum and articles of association for a deed of settlement, either with or without any such alteration as aforesaid with respect to the objects of the company, but in no case shall any such alteration take effect until confirmed on petition by the court which has jurisdiction to make an order for winding up the company.

(2.) Before confirming any such alteration the court must be satisfied—

- (a.) that sufficient notice has been given to every holder of debentures or debenture stock of the company, and any persons or class of persons whose interests will, in the opinion of the court be affected by the alteration; and
- (b.) that, with respect to every creditor who in the opinion of the court is entitled to object, and who signifies his objection in manner directed by the court, either his consent to the alteration has been obtained or his debt or claim has been discharged or has determined, or has been secured to the satisfaction of the court.

Provided that the court may, in the case of any person or class of persons, for special reasons, dispense with the notice required by this section.

(3.) An order confirming any such alteration may be made on such terms and subject to such conditions as to the court seems fit, and the court may make such orders as to costs as it deems proper.

(4.) The court shall, in exercising its discretion under this Act, have regard to the

rights and interests of the members of the company, or of any class of those members, as well as to the rights and interests of the creditors, and may, if it thinks fit, adjourn the proceedings in order that an arrangement may be made to the satisfaction of the court for the purchase of the interests of dissentient members; and the court may give such directions and make such orders as it may think expedient for the purpose of facilitating any such arrangement or carrying the same into effect: Provided always, that it shall not be lawful to expend any part of the capital of the company in any such purchase.

(5.) The court may confirm, either wholly or in part, any such alteration as aforesaid with respect to the objects of the company if it appears that the alteration is required in order to enable the company—

- (a.) To carry on its business more economically or more efficiently; or
- (b.) To attain its main purpose by new or improved means; or
- (c.) To enlarge or change the local area of its operations; or
- (d.) To carry on some business or businesses which under existing circumstances may conveniently or advantageously be combined with the business of the company; or
- (e.) To restrict or abandon any of the objects specified in the memorandum of association or deed of settlement,

II. Registration of order together with memorandum as altered or substituted memorandum and articles and consequences thereof.—(1.) Where a company has altered the provisions of its memorandum of association or deed of settlement with respect to the objects of the company, or has altered the form of its constitution by substituting a memorandum and articles of association for a deed of settlement, and such alteration has been confirmed by the court, an office copy of the order confirming such alteration, together with a printed copy

of the memorandum of association or deed of settlement so altered, or together with a printed copy of the substituted memorandum and articles of association (as the case may be), shall be delivered by the company to the Registrar of Joint Stock Companies within fifteen days from the date of the order, and the registrar shall register the same, and shall certify under his hand the registration thereof, and his certificate shall be conclusive evidence that all the requisitions of this Act with respect to such alteration and the confirmation thereof have been complied with, and thenceforth (but subject to the provisions of this Act) the memorandum or deed of settlement so altered shall be the memorandum of association or deed of settlement of the company, or, as the case may be, such substituted memorandum and articles of association shall apply to the company in the same manner as if the company were a company registered under Part I. of the Companies Act, 1862, with such memorandum and articles of association,

and the company's deed of settlement shall cease to apply to the company.

(2.) If a company makes default in delivering to the registrar any document required by this Act to be delivered to him the company shall be liable to a penalty not exceeding ten pounds for every day during which it is in default.

III. *Short title and construction.*—(1.) This Act may be cited as the Companies (*Memorandum of Association*) Act, 1890.

(2.) This Act and the Companies Acts, 1862 to 1886, shall be construed as one Act, and may be cited collectively as the Companies Acts, 1862 to 1890.

(3.) In this Act the expression "deed of settlement" includes any contract of co-partnership or other instrument constituting or regulating the company and not being an Act of Parliament, a royal charter, or letters patent.

59 and 60 Vict., c. 14, provides that the following Acts may be cited as "The Companies Acts, 1862 to 1893":—

- 25 and 26 Vict., c. 89, The Companies Act, 1862.
- 27 and 28 Vict., c. 19, The Companies Seals Act, 1864.
- 30 and 31 Vict., c. 131, The Companies Act, 1867.
- 33 and 34 Vict., c. 104, The Joint Stock Companies Arrangement Act, 1870.
- 40 and 41 Vict., c. 26, The Companies Act, 1877.
- 42 and 43 Vict., c. 76, The Companies Act, 1879.
- 43 Vict., c. 19, The Companies Act, 1880.
- 46 and 47 Vict., c. 30, The Companies (Colonial Registers) Act, 1883.
- 49 and 50 Vict., c. 23, The Companies Act, 1886.
- 53 and 54 Vict., c. 62, The Companies (*Memorandum of Association*) Act, 1890.
- 53 and 54 Vict., c. 63, The Companies (*Winding-up*) Act, 1890 (in England and Wales).
- 53 and 54 Vict., c. 64, The Directors Liability Act, 1890.
- 56 and 57 Vict., c. 58, The Companies (*Winding-up*) Act, 1893.

ACT OF PARLIAMENT

T

Amend the Companies Act, 1867.—[61 and 62 Vict., cap. 26.—2nd August 1898.]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

I. *Court empowered to grant relief for non-compliance with 30 & 31 Vict. c. 131, s. 25.*—(1.) Whenever, before or after the commencement of this Act, any shares in the capital of any company under the Companies Acts, 1862 and 1890, credited as fully or partly paid up shall have been or may be issued for a consideration other than cash, and at or before the issue of such shares no contract or no sufficient contract is filed with the Registrar of Joint Stock Companies, in compliance with section twenty-five of the Companies Act, 1867, the company or any person interested in such shares or any of them may apply to the court for relief, and the court, if satisfied that the omission to file a contract or sufficient contract was accidental or due to inadvertence, or that for any reason it is just and equitable to grant relief, may make an order for the filing with the registrar of a sufficient contract in writing, and directing that on such contract being filed within a specified period it shall, in relation to such shares, operate as if it had been duly filed with the registrar aforesaid before the issue of such shares.

(2.) Any such application may be made in the manner in which an application to rectify the register of members may be made under section thirty-five of the Companies Act, 1862, and either before or after an order has been made or an effective resolution has been passed for the winding-up of such company, and either before or after the commencement of any proceedings for enforcing the liability on such shares consequent on the omission aforesaid, and any

such application shall, if not made by the company, be served on the company.

(3.) Any such order may be made on such terms and conditions as the court may think fit, and the court may make such order as to costs as it deems proper, and may direct that an office copy of the order shall be filed with the registrar aforesaid, and the order shall in all respects have full effect.

(4.) Where the court in any such case is satisfied that the filing of the requisite contract would cause delay or inconvenience, or is impracticable, it may, in lieu thereof, direct the filing of a memorandum in writing, in a form approved by the court, specifying the consideration for which the shares were issued, and may direct that on such memorandum being filed within a specified period it shall in relation to such shares operate as if it were a sufficient contract in writing within the meaning of section twenty-five of the Companies Act, 1867, and had been duly filed with the registrar aforesaid before the issue of such shares. The memorandum shall before the filing thereof be stamped with the same amount of ad valorem stamp duty as would be chargeable upon the requisite contract unless the contract has been produced to the registrar duly stamped, or unless the registrar is otherwise satisfied that the contract was duly stamped.

II. *Jurisdiction cumulative.*—The jurisdiction by the Act given to the court is not by implication to curtail or derogate from its jurisdiction to grant relief in any such case under section thirty-five of the Companies Act, 1862, or otherwise.

III. *Short title and construction.*—This Act may be cited as the Companies Act, 1898, and shall be read with the Companies Acts, 1862 to 1893.

ACT OF PARLIAMENT

TO

Amend the Companies Acts.—[63 and 64 Vict., cap. 48.—8th August 1900.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

Incorporation and Objects.

I. *Conclusiveness of certificate of incorporation.*—(1.) A certificate of incorporation given by the registrar in respect of any association shall be conclusive evidence that all the requisitions of the Companies Acts in respect of registration and of matters precedent and incidental thereto have been complied with, and that the association is a company authorised to be registered and duly registered under the Companies Acts.

(2.) A statutory declaration by a solicitor of the High Court engaged in the formation of the company or by a person named in the articles of association as a director or secretary of the company of compliance with all or any of the said requisitions shall be produced to the registrar, and the registrar may accept this declaration as sufficient evidence of such compliance.

(3.) The incorporation of a company shall take effect from the date of incorporation mentioned in the certificate of incorporation.

(4.) This section applies to all certificates of incorporation, whether given before or after the passing of this Act.

Appointment and Qualification of Director.

II. *Restrictions on appointment or advertisement of director.*—(1.) A person shall not be capable of being appointed director of a company by the articles of association, and shall not be named as a director or proposed director of a company in any prospectus issued by or on behalf of the company, unless, before the registration of the articles or the publication of the prospectus, as the case may be, he has by himself or by his agent, authorised in writing—

(i.) signed and filed with the registrar a consent in writing to act as such director; and

(ii.) either signed the memorandum of association for a number of shares not less than his qualification (if any), or signed and filed with the registrar a contract in writing to take from the company and pay for his qualification shares (if any).

(2.) On the application for registration of the memorandum and articles of association of a company, the applicant shall deliver to the registrar a list of the persons who have consented to be directors of the company, and if this list contains the name of any person who has not so consented, the applicant shall be liable to a fine not exceeding fifty pounds.

(3.) Provided that this section shall not apply to a company registered before the commencement of this Act, or to a company which does not issue any invitation to the public to subscribe for its shares, or to a prospectus issued by or on behalf of a company after the expiration of one year from the date at which the company is entitled to commence business.

III. *Qualification of director.*—(1.) Without prejudice to the restrictions imposed by the last foregoing section, it shall be the duty of every director who is by the regulations of the company required to hold a specified share qualification, and who is not already qualified, to obtain his qualification within two months after his appointment, or such shorter time as may be fixed by the regulations of the company.

(2.) The office of director of a company shall be vacated if the director does not, within two months from the date of his appointment, or within such shorter time as may be fixed by the regulations of the company, obtain his qualification, or if after the expiration of such period or shorter time he ceases at any time to hold his qualification: and a person vacating office under this section shall be incapable of being reappointed director of the company until he has obtained his qualification.

(3.) If after the expiration of the said period or shorter time any unqualified person acts as director of a company, he shall be liable to pay to the company the sum of five pounds for every day during which he so acts.

Allotment.

IV. *Restriction as to allotment.*—(1.) No allotment shall be made of any share capital of a company offered to the public for subscription, unless the following conditions have been complied with, namely,—

(a) the amount (if any) fixed by the memorandum or articles of association and named in the prospectus as the minimum subscription upon which the directors may proceed to allotment; or

(b) if no amount is so fixed and named, then the whole amount of the share capital so offered for subscription, has been subscribed, and the sum payable on application for the amount so fixed and named, or for the whole amount offered for subscription, has been paid to and received by the company.

(2.) The amount so fixed and named and the whole amount aforesaid shall be reckoned exclusively of any amount payable otherwise than in cash, and is in this Act referred to as the minimum subscription.

(3.) The amount payable on application of each share shall not be less than five per cent of the nominal amount of the share.

(4.) If the conditions aforesaid have not been complied with on the expiration of forty days after the first issue of the prospectus, all money received from applicants for shares shall be forthwith repaid to the applicants without interest, and, if any such money is not so repaid within forty-eight days after the issue of the prospectus, the directors of the company shall be jointly and severally liable to repay that money with interest at the rate of five per centum per annum from the expiration of the forty-eight days: Provided that a director shall not be liable if he proves that the loss of the money was not due to any misconduct or negligence on his part.

(5.) Any condition requiring or binding any applicant for shares to waive compliance with any requirement of this section shall be void.

(6.) This section, except subsection (8) thereof, shall not apply to any allotment of shares subsequent to the first allotment of shares offered to the public for subscription.

V. Effect of irregular allotment.—(1.) An allotment made by a company to an applicant in contravention of the foregoing provisions of this Act shall be voidable at the instance of the applicant within one month after the holding of the statutory meeting of the company and not later, and shall be so voidable notwithstanding that the company is in course of being wound up.

(2.) If any director of a company knowingly contravenes or permits or authorises the contravention of any of the foregoing provisions of this Act with respect to allotment he shall be liable to compensate the company and the allottee respectively for any loss, damages, or costs which the company or the allottee may have sustained or incurred thereby: Provided that proceedings to recover such loss, damages, or costs shall not be commenced after the expiration of two years from the date of the allotment.

VI. Restrictions on commencement of business.—(1.) A company shall not commence any business or exercise any borrowing powers unless—

(a) shares held subject to the payment of the whole amount thereof in cash have been allotted to an amount not less in the whole than the minimum subscription; and

(b) every director of the company has paid to the company on each of the shares taken or contracted to be taken by him, and for which he is liable to pay in cash, a proportion equal to the proportion payable on application and allotment on the shares offered for public subscription; and

(c) there has been filed with the registrar a statutory declaration by the secretary or one of the directors, in the prescribed form, that the aforesaid conditions have been complied with.

(2.) The registrar shall, on the filing of this statutory declaration, certify that the company is entitled to commence business, and that certificate shall be conclusive evidence that the company is so entitled.

(3.) Any contract made by a company before the date at which it is entitled to commence business shall be provisional only, and shall not be binding on the company until that date, and on that date it shall become binding.

(4.) Nothing in this section shall prevent the simultaneous offer for subscription of any shares and debentures or the receipt of any application.

(5.) If any company commences business or exercises borrowing powers in contravention of this section, every person who is responsible for the contravention shall, without prejudice to any other liability, be liable to a fine not exceeding fifty pounds for every day during which the contravention continues.

(6.) Nothing in this section shall apply to a company registered before the commencement of this Act.

(7.) This section shall not apply to any company where there is no invitation to the public to subscribe for its shares.

VII. Return as to allotments.—(1.) Whenever a company limited by shares makes any allotment of its shares, the company shall within one month thereafter file with the registrar—

(a) a return of the allotments, stating the number and nominal amount of the shares comprised in the allotment, the names, addresses, and descriptions of the allottees, and the amount (if any) paid or due and payable on each share; and

(b) in the case of shares allotted in whole or in part for a consideration other than cash, a contract in writing constituting the title of the allottee to such allotment, together with any contract of sale, or for services or other consideration in respect of which such allotment was made, such contracts being duly stamped, and a return stating the number and nominal amount of shares so allotted, the extent to which they are to be treated as paid up, and the consideration for which they have been allotted.

(2.) If default is made in complying with the requirements of this section, every director, manager, secretary, or other officer of the company, who is knowingly a party to the default, shall be liable to a fine not exceeding fifty pounds for every day during which the default continues.

VIII. *Commissions, discounts, etc.*—(1.) Upon any offer of shares to the public for subscription, it shall be lawful for a company to pay a commission to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares in the company, or procuring, or agreeing to procure, subscriptions, whether absolute or conditional, for any shares in the company, if the payment of the commission and the amount or rate per cent. of the commission paid or agreed to be paid are respectively authorised by the articles of association and disclosed in the prospectus, and the commission paid or agreed to be paid does not exceed the amount or rate so authorised.

(2.) Save as aforesaid no company shall apply any of its shares or capital money, either directly or indirectly, in payment of any commission, discount, or allowance, to any person in consideration of his subscribing, or agreeing to subscribe, whether absolutely or conditionally, for any shares of the company, or procuring, or agreeing to procure, subscriptions, whether absolute or conditional, for any shares in the company, whether the shares or money be so applied by being added to the purchase money of any property acquired by the company or to the contract price of any work to be executed for the company, or the money be paid out of the nominal purchase money or contract price, or otherwise.

(3.) But nothing in this section shall affect the power of any company to pay such brokerage as it has heretofore been lawful for a company to pay.

Prospectus.

IX. *Filing of prospectus.*—(1.) Every prospectus issued by or on behalf of a company, or in relation to any intended company, shall be dated, and that date shall, unless the contrary be proved, be taken as the date of publication of the prospectus.

(2.) A copy of every such prospectus shall be signed by every person who is named therein as a director or proposed director of the company, or by his agent, authorised in writing, and shall be filed with the registrar on or before the date of its publication.

(3.) The registrar shall not register any prospectus unless it is so dated and signed. No prospectus shall be issued until so filed for registration, and every prospectus shall state on the face of it that it has been so filed.

X. *Specific requirements as to particulars of prospectus.*—(1.) Every prospectus issued by or on behalf of a company, or by or on behalf of any person who is or has been engaged or interested in the formation of the company, must state—

(a) the contents of the memorandum of association, with the names, descriptions, and addresses of the signatories, and the number of shares subscribed for by them respectively; and the number of founders or management shares, if any, and the nature and extent of the interest of the holders in the property and profits of the company; and

(b) the number of shares, if any, fixed by the articles of association as the qualification of a director, and provision in the articles of association as to the remuneration of the directors; and

(c) the names, descriptions, and addresses of the directors or proposed directors; and

(d) the minimum subscription on which the directors may proceed to allotment, and the amount payable on application after allotment on each share; and in the case of a second or subsequent offer of shares, the amount offered for subscription on each previous allotment, and the amount actually allotted; and the amount, if any, paid on such shares; and

(e) the number and amount of shares and debentures issued, or agreed to be issued, as fully or partly paid up otherwise than in cash, and in the latter case the extent to which they are so paid up, and in either case, the consideration for which such shares or debentures have been issued or are proposed or intended to be issued; and

(f) the names and addresses of the vendors of any property purchased or acquired by the company, or proposed so to be purchased or acquired, which is to be paid for wholly or partly out of the proceeds of the issue offered for subscription by the prospectus, or the purchase or acquisition of which has not been completed at the date of publication of the prospectus, and the amount payable in cash, shares, or debentures, to the vendor, and where there is more than one separate vendor, or the company is a sub-purchaser, the amount so payable to each vendor; and

(g) the amount (if any) paid or payable as purchase money in cash, shares, or debentures, of any such property as aforesaid, specifying the amount payable for goodwill; and

(h) the amount (if any) paid or payable as commission for subscribing or agreeing to subscribe, or procuring or agreeing to procure subscriptions for any shares in the company, or the rate of any such commission; and

(i) the amount, or estimated amount, of preliminary expenses; and

(j) the amount paid or intended to be paid to any promoter and the consideration for any such payment; and

(k) the dates of and parties to every material contract, and a reasonable time and place at which any material contract or a copy thereof may be inspected: Provided that this requirement shall not apply to a contract entered into in the ordinary course of the business carried on or intended to be carried on by the company, or to any contract entered into more than three years before the date of publication of the prospectus; and

(l) the names and addresses of the auditors (if any) of the company; and

(m) full particulars of the nature and extent of the interest (if any) of every director in the promotion of or in the property

proposed to be acquired by the company, with a statement of all sums paid or agreed to be paid to him in cash or shares by any person either to qualify him as a director or otherwise for services rendered by him in connection with the formation of the company.

(2.) For the purposes of this section every person shall be deemed to be a vendor who has entered into any contract, absolute or conditional, for the sale or purchase, or for any option of purchase, of any property to be acquired by the company, in any case where—

(a) the purchase money is not fully paid at the date of publication of the prospectus; or

(b) the purchase money is to be paid or satisfied wholly or in part out of the proceeds of the issue offered for subscription by the prospectus; or

(c) the contract depends for its validity or fulfilment on the result of such issue.

(3.) Where any of the property to be acquired by the company is to be taken on lease, this section shall apply as if the expression "vendor" included the lessor, and the expression "purchase money" included the consideration for the lease, and the expression "sub-purchaser" included a sub-lessee.

(4.) This section shall not apply to a circular or notice inviting existing members or debenture holders of a company to subscribe for further shares or debentures, but, subject as aforesaid, this section shall apply to any prospectus whether issued on or with reference to the formation of a company or subsequently: Provided that—

(a) the requirements as to the memorandum of association, and the qualification, remuneration, and interest of directors, the names, descriptions, and addresses of directors or proposed directors, and the amount, or estimated amount, of preliminary expenses, shall not apply in the case of a prospectus published more than one year after the date at which the company is entitled to commence business; and

(b) in the case of a prospectus published more than one year after the date at which the company is entitled to commence business, the obligation to disclose all material contracts shall be limited to a period of two years immediately preceding the publication of the prospectus.

(5.) Any condition requiring or binding any applicant for shares or debentures to waive compliance with any requirement of this section, or purporting to affect him with notice of any contract, document or matter not specifically referred to in the prospectus, shall be void.

(6.) Where any such prospectus as is mentioned in this section is published as a newspaper advertisement, it shall not be necessary to specify the contents of the memorandum of association or the signatories thereto, and the number of shares subscribed for by them.

(7.) In the event of non-compliance with any of the requirements of this section, a director or other person responsible for the prospectus shall not incur any liability by

reason of the non-compliance, if he proves that—

(a) as regards any matter not disclosed, he was not cognisant thereof; or

(b) the non-compliance arose from an honest mistake of fact on his part:

Provided that in the event of non-compliance with the requirements contained in paragraph (m) of subsection (1) of this section no director or other person shall incur any liability in respect of such non-compliance unless it be proved that he had knowledge of the matters not disclosed.

(8.) Nothing in this section shall limit or diminish any liability which any person may incur under the general law apart from this section.

XI. *Restriction on alteration of terms mentioned in prospectus.*—A company shall not prior to the statutory meeting vary the terms of a contract referred to in the prospectus, except subject to the approval of the statutory meeting.

Statutory Meeting.

XII. *First statutory meeting of company.*—

(1.) Every company limited by shares and registered after the commencement of this Act shall, within a period of not less than one month nor more than three months from the date at which the company is entitled to commence business, hold a general meeting of the members of the company, which shall be called the statutory meeting.

(2.) The directors shall, at least seven days before the day on which the meeting is held, forward to every member of the company a report certified by not less than two directors of the company, or, where there are less than two directors, by the sole director and manager, stating:—

(a) the total number of shares allotted, distinguishing shares allotted as fully or partly paid up otherwise than in cash, and stating in the case of shares partly paid up the extent to which they are so paid up, and in either case the consideration for which they have been allotted;

(b) the total amount of cash received by the company in respect of such shares, distinguished as aforesaid;

(c) an abstract of the receipts and payments of the company on capital account to the date of the report, and an account or estimate of the preliminary expenses of the company;

(d) the names, addresses, and descriptions of the directors, auditors (if any), manager (if any), and secretary of the company; and

(e) the particulars of any contract, the modification of which is to be submitted to the meeting for its approval, together with the particulars of the modification, or proposed modification.

(3.) The report shall, so far as it relates to the shares allotted by the company, and to the cash received in respect of such shares, and to the receipts and payments of the company on capital account, be

certified as correct by the auditors, i. any, of the company.

(4.) The directors shall cause a copy of the report, certified as by this section required, to be filed with the registrar forthwith after the sending thereof to the members of the company.

(5.) The directors shall cause a list showing the names, descriptions, and addresses of the members of the company, and the number of shares held by them respectively, to be produced at the commencement of the meeting, and to remain open and accessible to any member of the company during the continuance of the meeting.

(6.) The members of the company present at the meeting shall be at liberty to discuss any matter relating to the formation of the company, or arising out of the report, whether previous notice has been given or not, but no resolution of which notice has not been given in accordance with the articles of association may be passed.

(7.) The meeting may adjourn from time to time, and at any such adjourned meeting any resolution of which notice has been given in accordance with the articles of association, either before or subsequently to the former meeting, may be passed, and the adjourned meeting shall have the same powers as an original meeting.

(8.) If default is made in filing such report as aforesaid or in holding the statutory meeting, then, at the expiration of fourteen days after the last day on which the meeting ought to have been held, any shareholder may petition the Court for the winding-up of the company, and upon the hearing of the petition the Court may either direct that the company be wound up, or give directions for the report being filed or a meeting being held, or make such other order as may be just, and may order that the costs of the petition be paid by any persons who in the opinion of the Court are responsible for the default.

XIII. Extraordinary general meeting.—(1.) Notwithstanding anything in any regulations of a company, the directors of a company shall, on the requisition of the holders of not less than one-tenth of the issued capital of the company upon which all calls or other sums then due have been paid, forthwith proceed to convene an extraordinary general meeting of the company.

(2.) The requisition must state the objects of the meeting, and must be signed by the requisitionists and deposited at the office of the company, and may consist of several documents in like form, each signed by one or more requisitionists.

(3.) If the directors of the company do not proceed to cause a meeting to be held within twenty-one days from the date of the requisition being so deposited, the requisitionists, or a majority of them in value, may themselves convene the meeting, but any meeting so convened shall not be held after three months from the date of such deposit.

(4.) If at any such meeting a resolution requiring confirmation at another meeting is passed, the directors shall forthwith convene

a further extraordinary general meeting for the purpose of considering the resolution and, if thought fit, of confirming it as a special resolution; and, if the directors do not convene the meeting within seven days from the date of the passing of the first resolution, the requisitionists, or a majority of them in value, may themselves convene the meeting.

(5.) Any meeting convened under this section by the requisitionists shall be convened in the same manner, as nearly as possible, as that in which meetings are to be convened by directors.

Mortgages and Charges.

XIV. Registration of mortgages and charges.

—(1.) Every mortgage or charge created by a company after the commencement of this Act and being either—

(a) a mortgage or charge for the purpose of securing any issue of debentures; or

(b) a mortgage or charge on uncalled capital of the company; or

(c) a mortgage or charge created or evidenced by an instrument which, if executed by an individual, would require registration as a bill of sale; or

(d) a floating charge on the undertaking or property of the company,

shall, so far as any security on the company's property or undertaking is thereby conferred, be void against the liquidator and any creditor of the company, unless filed with the registrar for registration in manner required by this Act within twenty-one days after the date of its creation, but without prejudice to any contract or obligation for repayment of the money thereby secured.

(2.) Where the mortgage or charge comprises property outside the United Kingdom, it shall, so far as that property is concerned, be sufficient compliance with the requirements of this section if a deed purporting to specifically charge such property be registered, notwithstanding that further proceedings may be necessary to make such mortgage or charge valid or effectual according to the law of the country in which such property is situate.

(3.) The registrar shall keep, with respect to each company, a register in the prescribed form of all such mortgages and charges created by the company after the commencement of this Act, and requiring registration under this section, and shall, on payment of the prescribed fee, enter in the register, with respect to every such mortgage or charge, the date of creation, the amount secured by it, short particulars of the property mortgaged or charged, and the names of the mortgagees or persons entitled to the charge.

(4.) Provided that where a series of debentures containing any charge to the benefit of which the debenture holders of that series are entitled *pari passu* is created by a company, it shall be sufficient to enter on the register—

(a) the total amount secured by the whole series; and

(b) the dates of the resolutions creating the series and of the covering deed, if any, by which the security is created or defined; and

(c) a general description of the property charged; and

(d) the names of the trustees, if any, for the debenture holders.

(5.) Where more than one issue is made of debentures in the same series, the company may require the registrar to enter on the register the date and amount of any particular issue, but an omission to do this shall not affect the validity of the debentures issued.

(6.) The registrar shall give a certificate under his hand of the registration of any mortgage or charge registered in pursuance of this section, stating the amount thereby secured (which certificate shall be conclusive evidence that the requirements of this section as to registration have been complied with), and the company shall cause a copy of the certificate so given to be endorsed on every debenture or certificate of debenture stock which is issued by the company, and the payment of which is secured by the mortgage or charge so registered.

(7.) It shall be the duty of the company to register every mortgage or charge created by the company and requiring registration under this section, and for that purpose to supply the registrar with the particulars required for registration; but any such mortgage or charge may be registered on the application of any person interested therein.

(8.) The register kept, in pursuance of this section, of the mortgages and charges of each company shall be open to inspection by any person on payment of the prescribed fee, not exceeding one shilling for each inspection.

(9.) Every company shall cause a copy of every instrument creating any mortgage or charge requiring registration under this section, to be kept at the registered office of the company, and to be open to inspection by the members and creditors of the company on payment of such fee, not exceeding one shilling for each inspection, as may be fixed by the regulations of the company. Provided that in the case of a series of uniform debentures, a copy of one such debenture shall be sufficient.

XV. Rectification of register.—A judge of the High Court, on being satisfied that the omission to register a mortgage or charge within the time required by this Act, or the omission or misstatement of any particular with respect to any such mortgage or charge, was accidental, or due to inadvertence or to some other sufficient cause, or is not of a nature to prejudice the position of creditors or shareholders of the company, or that on other grounds it is just and equitable to grant relief may, on the application of the company or any person interested, and on such terms and conditions as seem to the judge just and expedient, order that the time for registration be extended, or, as the case may be, that the omission or misstatement be rectified.

XVI. Entry of satisfaction.—The registrar may, on evidence being given to his satisfaction that the debt for which any registered mortgage or charge was given has been paid or satisfied, order that a memorandum of

satisfaction be entered on the register, and shall, if required, furnish the company with a copy thereof.

XVII. Index to registers of mortgages and charges.—The registrar shall keep a chronological index, in the prescribed form and with the prescribed particulars, to the mortgages or charges registered under this Act.

XVIII. Penalties.—If any company makes default in complying with the requirements of this Act as to the registration of any mortgage or charge created by the company, the company, and every director, manager, and other officer of the company who knowingly and wilfully authorised or permitted such default, shall, without prejudice to any other liability, be liable on summary conviction to a fine not exceeding one hundred pounds; and if any person knowingly and wilfully authorises or permits the delivery of any debenture or certificate of debenture stock required by this Act to be registered, without a copy of the certificate of the registrar being endorsed upon it, he shall, without prejudice to any other liability, be liable on summary conviction to a fine not exceeding one hundred pounds.

Annual Summary.

XIX. Annual summary.—(1.) The summary mentioned in section twenty-six of the Companies Act, 1862, shall be so framed as to distinguish between the shares issued for cash and the shares issued otherwise than for cash, or only partly for cash, and shall, in addition to the particulars required by that section to be specified, also specify—

(a) the total amount of debt due from the company in respect of all mortgages and charges which require registration under this Act, or which would require such registration if created after the commencement of this Act; and

(b) the names and addresses of the persons who are the directors of the company at the date of the summary.

(2.) The list and summary mentioned in the said section twenty-six must be signed by the manager or by the secretary of the company.

XX. Amendment of 25 and 26 Vict., c. 89, §§ 45, 46.—Sections forty-five and forty-six of the Companies Act, 1862, shall apply to companies having a capital divided into shares, and the words "and not having a capital divided into shares" in those sections shall be repealed.

Audit.

XXI. Appointment of auditors.—(1.) Every company shall at each annual general meeting appoint an auditor or auditors, to hold office until the next general meeting.

(2.) If an appointment of auditors is not made at an annual general meeting, the Board of Trade may, on the application of any member of the company, appoint an auditor of the company for the current year, and fix the remuneration to be paid to him by the company for his services.

(3.) A director or officer of the company shall not be capable of being appointed auditor of the company.

(4.) The first auditors of the company may be appointed by the directors before the statutory meeting, and if so appointed shall hold office until the first annual general meeting, unless previously removed by a resolution of the shareholders in general meeting, in which case the shareholders at such meeting may appoint auditors.

(5.) The directors of a company may fill any casual vacancy in the office of auditor, but while any such vacancy continues the surviving or continuing auditor or auditors, if any, may act.

XXII. Remuneration of auditors.—The remuneration of the auditors of a company shall be fixed by the company in general meeting, except that the remuneration of any auditors appointed before the statutory meeting, or to fill any casual vacancy, may be fixed by the directors.

XXIII.—Rights and duties of auditors.—Every auditor of a company shall have a right of access at all times to the books and accounts and vouchers of the company, and shall be entitled to require from the directors and officers of the company such information and explanation as may be necessary for the performance of the duties of the auditors; and the auditors shall sign a certificate at the foot of the balance sheet stating whether or not all their requirements as auditors have been complied with, and shall make a report to the shareholders on the accounts examined by them, and on every balance sheet laid before the company in general meeting during their tenure of office; and in every such report shall state whether, in their opinion, the balance sheet referred to in the report is properly drawn up so as to exhibit a true and correct view of the state of the company's affairs as shown by the books of the company; and such report shall be read before the company in general meeting.

Winding up.

XXIV. Application of 33 and 34 Vict., c. 104, § 2.—The provisions of section two of the Joint Stock Companies Arrangement Act, 1870, shall apply not only as between the company and the creditors, or any class thereof, but as between the company and the members, or any class thereof.

XXV. Amendment of 25 and 26 Vict., c. 89, § 138, as to applications.—In a voluntary winding-up an application under section one hundred and thirty-eight of the Companies Act, 1862, may be made by any creditor of the company.

Defunct Companies.

XXVI. Amendment of law as to striking names of defunct companies off register.—(1.) Where a company is being wound up and the registrar has reasonable cause to believe that no liquidator is acting, or that the affairs of

the company are fully wound up, and the returns required to be made by the liquidator have not been made for a period of six consecutive months after notice by the registrar demanding the returns has been sent by post to the registered address of the company, or to the liquidator at his last known place of business, the provisions of section seven of the Companies Act, 1880, shall apply in like manner as if the registrar had not within one month after sending the second letter therein mentioned received any answer thereto.

(2.) In subsection five of the said section seven, after the words "or member," in each place where they occur, shall be inserted the words "or creditor," and in the same subsection, after the word "operation," the words "or otherwise" shall be substituted for the word "and."

Companies limited by Guarantee.

XXVII. Provisions as to companies limited by guarantee.—(1.) A company limited by guarantee shall not be capable of having a capital divided into shares, unless the memorandum of association so provides, and specifies the amount of its capital (subject to increase or reduction in accordance with the Companies Acts) and the number of shares into which the capital is divided.

(2.) Every provision in any memorandum or articles of association or resolution of a company (whether limited by guarantee or otherwise) purporting to divide the undertaking of the company into shares or interests shall for the purposes of this section be treated as a provision for a capital divided into shares, notwithstanding that the nominal amount or number of the shares or interests is not specified thereby.

(3.) In the case of a company limited by guarantee and not having a capital divided into shares, every provision in the memorandum or articles of association or in any resolution of the company purporting to give any person a right to participate in the divisible profits of the company otherwise than as a member shall be void.

(4.) This section shall apply only to companies registered after the commencement of this Act.

False Statements.

XXVIII. Penalty for false statement.—If any person in any return, report, certificate, balance sheet, or other document, required by or for the purposes of this Act, wilfully makes a statement false in any material particular, knowing it to be false, he shall be guilty of a misdemeanour, and shall be liable on conviction on indictment to imprisonment for a term not exceeding two years, with or without hard labour, and on summary conviction to imprisonment for a term not exceeding four months, with or without hard labour, and in either case to a fine in lieu of or in addition to such imprisonment as aforesaid: Provided that the fine imposed on summary conviction shall not exceed one hundred pounds.

Conversion of Stock into Shares.

XXIX. Conversion of stock into shares.—Every company limited by shares, and which has in pursuance of the Companies Act, 1862, converted any portion of its shares into stock, may so far modify the conditions in its memorandum of association, if authorised to do so by its articles as originally framed or as altered by special resolution in manner provided in the Companies Act, 1862, as to reconvert such stock into paid-up shares of any denomination.

Supplemental.

XXX. Definitions.—In this Act, unless the context otherwise requires,—

The expression “Companies Acts” means the Companies Act, 1862, and the Acts amending the same;

The expression “company” means a company registered under the Companies Acts;

The expression “director” includes any person occupying the position of director, by whatever name called;

The expression “registered” means registered under the Companies Acts;

The expression “prescribed” means prescribed by the Board of Trade;

The expression “prospectus” means any prospectus, notice, circular, advertisement, or other invitation, offering to the public for subscription or purchase any shares or debentures of a company;

The expression “debenture” includes debenture stock;

Other expressions have the same meanings as in the Companies Act, 1862.

XXXI. Application of Act.—This Act shall, except as otherwise expressed, apply to every

company, whether formed before or after the commencement of this Act.

XXXII. Construction of 53 and 54 Vict., c. 63, and of Act.—The Companies (Winding-up) Act, 1890, and this Act, shall have effect as part of the Companies Act, 1862; but nothing in this section shall be construed as extending the Companies (Winding-up) Act, 1890, to Scotland or Ireland.

XXXIII. Repeal.—(1.) Section twenty-five of the Companies Act, 1867, and the other enactments mentioned in the schedule to this Act, to the extent specified in the third column of that schedule, are hereby repealed.

(2.) No proceedings under section twenty-five of the Companies Act, 1867, shall be commenced after the commencement of this Act.

XXXIV. Application to Scotland.—This Act shall apply to Scotland, subject to the following provisions and modifications:—

(1.) “Solicitor of the High Court” shall mean enrolled law agent;

(2.) The provisions of this Act with respect to the registration of mortgages and charges shall not apply to companies registered in Scotland;

(3.) All prosecutions for offences or fines shall be at the instance of the Lord Advocate or a procurator-fiscal, as the Lord Advocate may direct.

XXXV. Commencement.—This Act shall, except as otherwise expressed, come into operation on the first day of January one thousand nine hundred and one.

XXXVI. Short title.—This Act may be cited as the Companies Act, 1900, and may be cited with the Companies Acts, 1862 to 1893.

SCHEDULE.

ENACTMENTS REPEALED.

Session and Chapter.	Short Title.	Extent of Repeal.
25 & 26 Vict., c. 89, .	The Companies Act, 1862,	Section eighteen, from “A certificate” to the end of the section. In sections forty-five and forty-six, the words “and not having a capital divided into shares.” Section one hundred and ninety-two.
30 & 31 Vict., c. 131, .	The Companies Act, 1867,	Sections twenty-five, thirty-eight, and thirty-nine.

ACT OF SEDERUNT

TO

Regulate procedure for the enforcement of Orders under the Companies Act, 1862, and the Bankruptcy Act, 1869.—[21st June 1883.]

The Lords of Council and Session, considering that it is necessary to regulate procedure for the enforcement in Scotland of the orders of courts having jurisdiction in bankruptcy in England and Ireland respectively, in terms of the Statute 32 and 33 Vict., cap. 71, sec. 73; and also for the enforcement in Scotland of orders made by the courts in England and Ireland respectively, for or in the course of the winding-up of a company, in terms of the Statute 25 and 26 Vict., cap. 89, sec. 122,—Do hereby enact and declare as follows :—

I. That on production to the clerk of the bills of an office copy of any order made by any of the courts aforesaid, the same shall be registered *in extenso* in a register to be kept for that purpose in the office of the said clerk, on payment of the fee mentioned in the schedule annexed hereto; and the said register shall be open to inspection of all concerned, on payment of the fee mentioned in the said schedule.

II. That after registration as aforesaid, the clerk of the bills shall append to such office copy a certificate subscribed by him of the registration thereof, in the terms mentioned in said schedule; and the same being so registered and certified, shall be a sufficient warrant to officers of court to charge for payment of the sums recoverable under such order, and of the expense of registering the same, and to use any further diligence that may be competent, in the same manner as if such order had been a decree originally pronounced in the Court of Session on the date of such registration as aforesaid.

And the Lords appoint this Act to be inserted in the books of sederunt, and to be printed and published in common form.

JOHN INGLIS, *I.P.D.*

SCHEDULE REFERRED TO.

Fee for registration of orders,	.	.	.	.	.	£0	5	0
Fee for search in register,	.	.	.	.	.	0	2	6

Form of Certificate.

"Registered in terms of the Act 32 and 33 Vict., cap. 71," or "of the Act 25 and 26 Vict., cap. 89" (as the case may be), and relative Act of Sederunt, dated 21st June 1883.

"Clerk of the Bills."

"BILL CHAMBER, EDINBURGH,
188 ."

ACT OF PARLIAMENT

FOR

Preserving Purchasers of Stock from Losses by Forged Transfers.— [5th August 1891.]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

I. *Power to make compensation for losses from forged transfer.*—(1.) Where a company or local authority issue or have issued shares, stock, or securities transferable by an instrument in writing or by an entry in any books or register kept by or on behalf of the company or local authority, they shall have power to make compensation by a cash payment out of their funds for any loss arising from a transfer of any such shares, stock, or securities, in pursuance of a forged transfer or of a transfer under a forged power of attorney.

(2.) Any company or local authority may, if they think fit, provide, either by fees not exceeding the rate of one shilling on every one hundred pounds transferred, to be paid by the transferee upon the entry of the transfer in the books of the company or local authority, or by insurance, reservation of capital, accumulation of income, or in any other manner which they may resolve upon, a fund to meet claims for such compensation.

(3.) For the purpose of providing such compensation any company may borrow on the security of their property, and any local authority may borrow with the like consent and on the like security and subject to the like conditions as to repayment by means of instalments or the provision of a sinking fund and otherwise as in the case of the securities in respect of which compensation is to be provided, but any money so borrowed by a local authority shall be repaid within a term not longer than five years. Any expenses incurred by a local authority in making compensation, or in the repayment of, or the payment of interest on, or otherwise in connexion with, any loan raised as aforesaid, shall, except so far as they may be met by such fees as aforesaid, be paid out of the fund or rate on which the security in respect of which compensation is to be made is charged.

(4.) Any such company or local authority may impose such reasonable restrictions on the transfer of their shares, stock, or securities, or with respect to powers of attorney for the transfer thereof, as they may consider requisite for guarding against losses arising from forgery.

(5.) Where a company or local authority compensate a person under this Act for any loss arising from forgery, the company or

local authority shall, without prejudice to any other rights or remedies, have the same rights and remedies against the person liable for the loss as the person compensated would have had.

II. *Definitions.*—For the purposes of this Act—

“*Company.*”—The expression “company” shall mean any company incorporated by or in pursuance of any Act of Parliament, or by royal charter.

“*Local authority.*”—The expression “local authority” shall mean the council of any county or municipal borough, and any authority having power to levy or require the levy of a rate the proceeds of which are applicable to public local purposes.

III. *Application to industrial societies, &c.*—This Act shall apply to any industrial, provident, friendly benefit, building, or loan society incorporated by or in pursuance of any Act of Parliament as if the society were a company.

IV. *Application to harbour and conservancy authorities.*—(1.) This Act shall apply to any harbour authority or conservancy authority as if the authority were a company.

(2.) For the purposes of this Act the expression “harbour authority” includes all persons being proprietors of or entrusted with the duty or invested with the power of constructing, improving, managing, regulating, maintaining, or lighting any harbour otherwise than for profit, and not being a joint stock company.

(3.) For the purposes of this Act the expression “conservancy authority” includes all persons entrusted with the duty or invested with the power of conserving, maintaining, or improving the navigation of any tidal water otherwise than for profit, and not being a joint stock company.

V. *Application to colonial stock.*—In the case of any colonial stock to which the Colonial Stock Act, 1877 (40 & 41 Vict. c. 59) applies, the Government of the colony of which the stock forms the whole or part of the public debt may, if they think fit, by declaration under their seal or under the signature of a person authorised by them in that behalf, and in either case deposited with the Commissioners of Inland Revenue, adopt this Act, and thereupon this Act shall apply to the colonial stock as if the registrar of the Government were a company and the stock were issued by him.

VI. *Short title.*—This Act may be cited as the Forged Transfers Act, 1891.

ACT OF PARLIAMENT

TO

Remove doubts as to the meaning of the Forged Transfers Act, 1891.—

[27th June 1892.]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

I. *Short title.*—This Act may be cited as the Forged Transfers Act, 1892, and this Act and the Forged Transfers Act, 1891, may be cited together as the Forged Transfers Acts, 1891 and 1892.

II. *Removal of doubt as to the operation of.*—Whereas by sub-section one of section one of the Forged Transfers Act, 1891, it is provided that such company or local authority as therein mentioned "shall have power to make compensation by a cash payment out of their funds for any loss arising from the transfer of any such shares, stock, or securities in pursuance of a forged transfer, or of a transfer under a forged power of attorney," and it is expedient to remove doubts as to the application of the Act to losses and forgeries before the passing of the Act : Be it therefore enacted as follows :—

The Forged Transfers Act, 1891, shall have effect as if at the end of sub-section one

of section one of that Act there were added the words "whether such loss arises, and whether the transfer or power of attorney was forged before or after the passing of this Act, and whether the person receiving such compensation, or any person through whom he claims, has or has not paid any fee or otherwise contributed to any fund out of which the compensation is paid."

III. Sub-section two of section one of the said Act shall be read as if, after the words "on any one hundred pounds transferred," were inserted the words "with a minimum charge equal to that for twenty-five pounds."

IV. *Provision where one company takes over shares, &c., of another company.*—Where the shares, stock, or securities of a company or local authority have by amalgamation or otherwise become the shares, stock, or securities of another company or local authority, the last-mentioned company and authority shall have the same power under the Forged Transfers Act, 1891, and this Act, as the original company or authority would have had if it had continued.

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